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IN SENATE

January 17, 2006

Introduced by Sens. SPANO, MAZIARZ, ALESI, BALBONI, BONACIC, DeFRANCIS-
CO, FARLEY, FLANAGAN, JOHNSON, LAVALLE, LEIBELL, MALTESE,
MARCELLINO,

MARCHI, MORAHAN, PADAVAN, RATH, ROBACH, TRUNZO, WINNER, WRIGHT
-- read

twice and ordered printed, and when printed to be committed to the
Committee on Labor

AN ACT to amend the labor law, in relation to requiring public employers
to develop and implement programs to prevent workplace violence

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Legislative findings. The legislature finds and declares
2 that workplace assaults and homicides are a serious public health prob-
3 lem that demands the attention of the state of New York. During the last
4 decade, homicide was the third leading cause of death for all workers
5 and the leading cause of occupational death for women workers. Workplace
6 violence presents a serious occupational safety hazard for workers, but
7 many employers and workers may be unaware of the risk. Moreover, the
8 hazard of workplace violence is not currently addressed by any specific
9 federal or state statute and regulation. It is critical to the mainte-
10 nance of a productive workforce that employers and workers evaluate
11 their workplaces to determine the risk of violence and to develop, and
12 implement programs to minimize the hazard. Experience has shown that
13 when employers evaluate the safety and health hazards in their workplac-
14 es and implement employee protection programs, the incidence of work-
15 place injuries is reduced. The legislature, therefore, further finds and
16 declares that the public health, safety and welfare would be advanced by
17 enactment of a law to require that employers develop and implement work-
18 place violence protection programs designed to minimize the danger to
19 employees of workplace violence.

20 § 2. The labor law is amended by adding a new section 27-b to read as
21 follows:

22 § 27-b. Duty of public employers to develop and implement programs to
23 prevent workplace violence. 1. Purpose. The purpose of this section is

24 to ensure that the risk of workplace assaults and homicides is evaluated
25 by affected public employers and their employees and that such employers

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 design and implement workplace violence protection programs to prevent
2 and minimize the hazard of workplace violence to public employees.
3 2. Definitions. For the purposes of this section:
4 a. "Employer" means: (1) the state; (2) a political subdivision of the
5 state, provided, however that this subdivision shall not mean any
6 employer as defined in section twenty-eight hundred one-a of the educa-
7 tion law; and (3) a public authority, a public benefit corporation, or
8 any other governmental agency or instrumentality thereof.
9 b. "Employee" means a public employee working for an employer.
10 c. "Workplace" means any location away from an employee's domicile,
11 permanent or temporary, where an employee performs any work-related duty
12 in the course of his or her employment by an employer.
13 d. "Supervisor" means any person within an employer's organization who
14 has the authority to direct and control the work performance of an
15 employee, or who has the authority to take corrective action regarding
16 the violation of a law, rule or regulation to which an employee submits
17 written notice.
18 e. "Retaliatory action" means the discharge, suspension, demotion,
19 penalization, or discrimination against any employee, or other adverse
20 employment action taken against an employee in the terms and conditions
21 of employment.
22 3. Risk evaluation and determination. Every employer shall evaluate
23 its workplace or workplaces to determine the presence of factors or
24 situations in such workplace or workplaces that might place employees at
25 risk of occupational assaults and homicides. Examples of such factors
26 shall include, but not limited to:
27 a. working in public settings (e.g., social services or other govern-
28 mental workers, police officers, firefighters, teachers, public trans-
29 portation drivers, health care workers, and service workers);
30 b. working late night or early morning hours;
31 c. exchanging money with the public;
32 d. working alone or in small numbers;
33 e. uncontrolled access to the workplace; and
34 f. areas of previous security problems.
35 4. Written workplace violence prevention program. Every employer with
36 at least twenty full time permanent employees shall develop and imple-
37 ment a written workplace violence prevention program for its workplace

38 or workplaces that includes the following:
39 a. a list of the risk factors identified in subdivision three of this
40 section that are present in such workplace or workplaces;
41 b. the methods the employer will use to prevent incidents of occupa-
42 tional assaults and homicides at such workplace or workplaces, including
43 but not limited to the following:
44 (1) making high-risk areas more visible to more people;
45 (2) installing good external lighting;
46 (3) using drop safes or other methods to minimize cash on hand;
47 (4) posting signs stating that limited cash is on hand;
48 (5) providing training in conflict resolution and nonviolent self-de-
49 fense responses; and
50 (6) establishing and implementing reporting systems for incidents of
51 aggressive behavior.
52 5. Employee information and training. a. Every employer with at least
53 twenty permanent full time employees shall make the written workplace
54 violence prevention program available, upon request, to its employees,
55 their designated representatives and the department.

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1 b. Every employer shall provide its employees with the following
2 information and training on the risks of occupational assaults and homi-
3 cides in their workplace or workplaces at the time of their initial
4 assignment and annually thereafter:
5 (1) employees shall be informed of the requirements of this section,
6 the risk factors in their workplace or workplaces, and the location and
7 availability of the written workplace violence prevention program
8 required by this section; and
9 (2) employee training shall include at least: (a) the measures employ-
10 ees can take to protect themselves from such risks, including specific
11 procedures the employer has implemented to protect employees, such as
12 appropriate work practices, emergency procedures, use of security alarms
13 and other devices, and (b) the details of the written workplace violence
14 prevention program developed by the employer.
15 6. Application. a. Any employee or representative of employees who
16 believes that a serious violation of a workplace violence protection
17 program exists or that an imminent danger exists shall bring such matter
18 to the attention of a supervisor in the form of a written notice and
19 shall afford the employer a reasonable opportunity to correct such
20 activity, policy or practice. This referral shall not apply where immi-
21 nent danger or threat exists to the safety of a specific employee or to

22 the general health of a specific patient and the employee reasonably
23 believes in good faith that reporting to a supervisor would not result
24 in corrective action.

25 b. If following a referral of such matter to the employee's supervi-
26 sor's attention and after a reasonable opportunity to correct such
27 activity, policy or practice the matter has not been resolved and the
28 employee or representative of employees still believes that a violation
29 of a workplace violence prevention program remains, or that an imminent
30 danger exists, such employee or representative of employees may request
31 an inspection by giving notice to the commissioner of such violation or
32 danger. Such notice and request shall be in writing, shall set forth
33 with reasonable particularity the grounds for the notice, shall be
34 signed by such employee or representative of employees, and a copy shall
35 be provided by the commissioner to the employer or the person in charge
36 no later than the time of inspection, except that on the request of the
37 person giving such notice, such person's name and the names of individ-
38 ual employees or representatives of employees shall be withheld. Such
39 inspection shall be made forthwith.

40 c. A representative of the employer and an authorized employee repre-
41 sentative shall be given the opportunity to accompany the commissioner
42 during an inspection for the purpose of aiding such inspection. Where
43 there is no authorized employee representative, the commissioner shall
44 consult with a reasonable number of employees concerning matters of
45 safety in the workplace.

46 d. The authority of the commissioner to inspect a premises pursuant to
47 such an employee complaint shall not be limited to the alleged violation
48 contained in such complaint. The commissioner may inspect any other area
49 of the premises in which he or she has reason to believe that a serious
50 violation of this section exists.

51 e. No employer shall take retaliatory action against any employee
52 because the employee does any of the following:

- 53 (1) makes an application pursuant to paragraph a of this subdivision;
54 (2) requests an inspection as authorized in paragraph b of this subdivi-
55 sion;

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1 (3) accompanies the commissioner as authorized in paragraph c of this
2 subdivision;

3 f. The commissioner may, upon his or her own initiative, conduct an
4 inspection of any premises occupied by an employer if he or she has

5 reason to believe that a violation of this section has occurred or if he
6 or she has a general administrative plan for the enforcement of this
7 section, including a general schedule of inspections, which provide a
8 rational administrative basis for such inspecting. Within one hundred
9 twenty days of the effective date of this paragraph the commissioner
10 shall adopt rules and regulations implementing the provisions of this
11 section.

12 g. Any information obtained by the commissioner pursuant to this
13 subdivision shall be obtained with a minimum burden upon the employers.

14 h. When a request for an inspection has been made in a situation where
15 there is an allegation of an imminent danger such that an employee would
16 be subjecting himself or herself to serious injury or death because of
17 the hazardous condition in the workplace, the inspection shall be given
18 the highest priority by the department and shall be carried out imme-
19 diately.

20 § 3. The provisions of this act shall not diminish the rights of
21 employees pursuant to any law, rule, regulation or collective bargaining
22 agreement.

23 § 4. Nothing in this act shall change or alter an agency's obligation
24 to comply with workplace safety standards as set forth by the joint
25 commission on accreditation of healthcare organizations. Any provision
26 of this act which jeopardizes an agency's receipt of federal Medicaid
27 and Medicare reimbursement shall be null and void with regard to such
28 agency.

29 § 5. This act shall take effect on the one hundred twentieth day after
30 it shall have become a law; provided, however, that effective immediate-
31 ly, the addition, amendment and/or repeal of any rule or regulation
32 necessary for the implementation of this act on its effective date is
33 authorized and directed to be made and completed on or before such
34 effective date.