

# Employers May Be Cited for Workplace Violence Incidents as Violation of OSHA's General Duty Standard

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The Occupational Safety and Health Act does not contain a specific standard governing workplace violence. But on March 4, 2019, in *Secretary of Labor v. Integra Health Mgmt., Inc.*,<sup>1</sup> a case of first impression, the Occupational Safety and Health Review Commission held that the Act's general duty standard obligates employers to protect their employees from workplace violence.

## Case Summary

In *Integra*, Integra employed "service coordinators" to help its clients, many of whom suffered from chronic medical conditions like mental illness, obtain and maintain medical care. The service coordinators' jobs included face-to-face interaction with the clients in their homes and Integra provided to the coordinators, "in-home" safety training. During an in-home client visit, a service coordinator was fatally stabbed by a mentally ill client. The Secretary of Labor cited Integra for violation of the Act's general duty standard. An administrative law judge affirmed the citation, and the Review Commission agreed.

The general duty standard requires employers to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."<sup>2</sup> To prove a violation of this standard, the Secretary needs to prove that (1) a condition or activity in the workplace presented a hazard; (2) the employer or its industry recognized the hazard; (3) the hazard was causing or likely to cause death or serious physical harm; and (4) a feasible and effective means existed to materially reduce the hazard.

Integra primarily argued that:

- Violent conduct of the client, a third party, was not a hazard encompassed by the Act
- Hazard that a service coordinator could be physically assaulted during a visit to a client site was not recognized by Integra
- Secretary's proposed methods of abatement would not materially reduce incidence of the alleged hazard

The Commission rejected Integra's argument that the alleged hazard—risk of criminal assault upon employees by third parties—was beyond the scope of the general duty standard. The Commission interpreted hazard under the Act as one "arising out of the employee's work." It found that there was a "direct nexus" between the work performed by the service coordinators at the client's home and the alleged risk of workplace violence. Thus, the hazard of workplace violence arose out of the employee's work and was within the scope of the Act.

The Commission also rejected Integra's argument that it could not anticipate the violent conduct of the client. Integra had rules and training materials that specifically addressed the possibility of violence by clients. Integra was also aware of safety concerns about the specific client. Thus, the hazard was recognized by Integra. Finally, the Commission found that the Secretary's proposed abatement of additional safety measures was feasible and could have resulted in material reduction in the incidence of the alleged hazard of workplace violence.

## Conclusion

Under *Integra*, employers in the healthcare industry could be cited for workplace violence under the Act's general duty standard if that hazard has been recognized. To minimize the potential for such a citation and to be effectively prepared to defend such a citation, it would be prudent for employers to identify and address the risks of violence in the workplace including conducting a review of their safety policies and procedures and the employee training programs. Employers should ensure that the risk of physical assault by patients/third parties at the workplace are adequately addressed in the safety policies and training programs.

While *Integra* applies only to states that do not have their own OSHA plan, in the absence of a specific standard governing workplace violence, such states may follow *Integra* and apply a general duty standard to incidents of workplace violence. In that regard, it should be noted that California's state OSHA plan has a specific standard applicable to workplace violence in healthcare.

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<sup>1</sup> OSHRC, No. 13-1124, 2019 WL 1142920.

<sup>2</sup> 29 U.S.C. § 654 (a)(1).