



AMERICAN SOCIETY OF SAFETY PROFESSIONALS

April 22, 2019

The Honorable Alma Adams
United States House of Representatives: Committee on Education and Labor
Chair, Subcommittee on Workforce Protections
United States Congresswoman for the 12th District
2436 Rayburn House Office Building
Washington, DC 20515-3312

The Honorable Bradley Byrne
United States Congressman for the 1st District
United States House of Representative: Subcommittee on Workforce Protections
119 Cannon House Office Building
Washington, DC 20515

The Honorable Joe Courtney
United States Congressman for the 2nd District
2332 Rayburn House Office Building
Washington, DC 20515

Comments of the American Society of Safety Professionals (ASSP)
The Workplace Violence Prevention for Health Care and Social Service Workers Act
(HR 1309 & S 851)

The American Society of Safety Professionals (ASSP) is pleased to submit the following comments to the House Education and Labor Committee and the Senate Health Education Labor and Pensions Committee in support of HR 1309 and S. 851, legislation to help protect workers in the healthcare and social service sectors from the threat of workplace violence.

ASSP notes that this legislation has already secured nearly 60 co-sponsors in the House of Representatives and 8 cosponsors in the U.S. Senate. Because we believe that safety is a non-partisan issue and that all of us benefit from the services the workers in these sectors deliver, we encourage bipartisan support of the legislation and additional public hearings on this critical issue.

ASSP is the oldest society of safety professionals in the world. Founded in 1911, ASSP represents more than 38,000 dedicated occupation safety and health (OSH) professionals. Our members are experts in managing workplace safety and health issues in every industry, in every state and across the globe. ASSP is also the Secretariat for various voluntary consensus standards related to best practices in occupational safety and health management and training.



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In late October 2018, ASSP hosted the [Women's Workplace Safety Summit](#), and workplace violence involving women was one of three focus topics of the event. Workplace violence has a disproportionate impact on women and is the leading cause of fatalities for workers who are women. ASSP's Women in Safety Excellence (WISE) Common Interest Group is also deeply engaged on the issue of workplace violence prevention.

ASSP commends your committees for addressing this issue through legislation that directs the Secretary of Labor to issue an OSH standard that requires covered employers within the healthcare and social service industries to develop and implement a comprehensive workplace violence prevention plan. If enacted, the legislation would ensure that enforceable and effective workplace violence prevention programs would be required within two years of enactment.

The Occupational Safety and Health Administration (OSHA) commenced a rulemaking by initiating a request for information (RFI) in December 2016: *OSHA Request for Information Concerning Prevention of Workplace Violence in Healthcare and Social Assistance*, OSHA Docket 2016-0014, Regulatory Information Number (RIN) 1218-AD 08. The comment period closed April 6, 2017. No further action has occurred since that date, despite workplace violence becoming an ever-more recognized hazard in the U.S.

ASSP submitted comments to OSHA on that RFI (at the time, the organization's name was American Society of Safety Engineers), and those comments are attached to this submission, along with an article from our "HealthBeat" publication, *Preventing Workplace Violence, A Systematic & Systemic Approach*, which was also submitted to the OSHA docket. We ask that these materials be formally included in the record on this legislation.

OSHA's November 2018 regulatory agenda included "Prevention of Workplace Violence in Health Care and Social Assistance" as a future item with a small business panel (pursuant to the Small Business Regulatory Enforcement Fairness Act) slated for March 2019. However, that date is now past with no action indicated any time in the foreseeable future. The next regulatory agenda will reveal whether any further action is anticipated by the agency within the next 12 months to move toward promulgation of a workplace violence standard.

Barring any movement from the agency in this regard, it is appropriate for Congress — in its oversight role — to signal to OSHA that this is a priority rulemaking area, and for your committees to take the lead on helping to fill the gaps in protections for the many vulnerable workers in this high-risk area.

Currently, OSHA can take enforcement actions against employers under its General Duty Clause (GDC) [Section 5(a)(1) of the Occupational Safety and Health Act of 1970] and can issue penalties of up to \$132,598 per willful or repeated violation. However, OSHA has the burden of providing that the cited employer was aware of a recognized hazard, that employees



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were actually exposed to the hazard within the previous six months and that there is a feasible method of abatement.

GDC citations are often difficult for the agency to sustain, they cannot trigger criminal prosecution even in the case of a fatality, and there is no coverage for third-party workers such as contractors or temporary staffers. This is one exception to OSHA's multiemployer worksite enforcement policy. In 2015, OSHA issued "Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers," but the guidance did not go through formal rulemaking so it is advisory and not enforceable at the present time.

Another problem with using the GDC as the main enforcement tool to address workplace violence issues is simply that it is reactive in virtually every situation. While OSHA investigates fatalities and cases with severe injuries that must be reported by law, it is virtually unheard of for OSHA to investigate an employer concerning workplace violence prevention before a tragic incident occurs, unless triggered by a publicized "near miss" or due to an employee hazard complaint.

While the federal Occupational Safety and Health Review Commission recently affirmed a GDC workplace violence violation issued against *Integra Health Management* (March 4, 2019, OSHRC), the action was taken only after the death of a healthcare worker at the hands of a patient, and the ultimate OSHA civil penalty was \$7,000. The case is still subject to appeal in the U.S. Court of Appeals and *amici curiae* in the case include the U.S. Chamber of Commerce (opposing the enforcement action) and the AFL-CIO (in support of the OSHA citation). ASSP is not a party to this action.

A Government Accountability Office study reported that there were 730,000 cases of healthcare workplace assaults over the 5-year span from 2009 through 2013. The Bureau of Labor Statistics reports that healthcare and social service sector employees suffered 69 percent of all workplace violence injuries caused by persons in 2016 and are nearly 5 times as likely to suffer a workplace violence injury than workers overall.

The healthcare and social service industries experience the highest rates, with workplace violence injury rates for this sector at 8.2 per 10,000 full-time workers, more than four times higher than the overall private sector incidence rate for such injuries. This is simply unacceptable when interventions are available to mitigate risk. As noted in ASSP's 2016 comments to OSHA, we believe that a workplace violence prevention standard is feasible and that there are measures that employers can use to reduce a significant risk of material harm.

Finally, ASSP observes that many of the at-risk workers in the healthcare and social service sectors are employed in the public sector, by state or local government facilities or agencies. Currently, they have no protections under the federal Occupational Safety and Health Act. The states that operate their own OSHA agencies must cover their public sector workers (and several state governmental agencies in federal OSHA states also cover the safety of their



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public sector workers), but most workers go without OSHA protection. We urge you to consider including public sector coverage of healthcare and social service workers in this legislation to the extent possible.

Conclusion

ASSP condemns all forms of violence in the workplace and is particularly concerned with the rise of injuries associated with violence in the healthcare and social service industry sectors, targeted by the pending federal legislation. ASSP supports congressional efforts to eliminate workplace violence and encourages OSHA to continue with its rulemaking to promulgate an enforceable and effective standard, accompanied by comprehensive education and outreach.

Thank you for consideration of ASSP's comments. We look forward to working with Congress in a proactive manner to address the critical issues affecting the health and safety of all Americans in the workplace.

Respectfully Submitted

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2018-19 ASSP President

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