



OSHA REGIONAL INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 20-05 (04-01) | **EFFECTIVE DATE:** October 1, 2019

SUBJECT: Regional Emphasis Program for Workplace Violence Hazards at Residential Intellectual and Developmental Disability Facilities

REGIONAL IDENTIFIER: Region VIII

ABSTRACT

Purpose: This Instruction renews a Regional Emphasis Program (REP) to reduce injuries occurring from workplace violence incidents through inspections of workplace violence hazards in Residential Intellectual and Developmental Disability Facilities, NAICS 623210.

Scope: This Instruction applies to OSHA Area Offices in Region VIII.

Reference: OSHA Instruction CPL 04-00-002, Procedures for Approval of Local Emphasis Programs (LEP), November 13, 2018.

Cancellation: This Instruction cancels Regional Notice 19-05, CPL 04-01, October 1, 2018, Regional Emphasis Program for Workplace Violence Hazards at Residential Intellectual and Developmental Disability Facilities.

State Impact: None

Action Offices: Billings, Bismarck, Denver, Englewood and Sioux Falls Area Offices

Originating Office: Denver Regional Office

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By and Under the Authority of:

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Executive Summary

Workers employed in Residential Intellectual and Developmental Disability facilities face many hazards that can lead to serious injury and death. Exposure to workplace violence incidents is a major hazard routinely faced by workers in this industry.

The intent of this renewed Regional Emphasis Program is to encourage employers to take steps to address workplace violence hazards, ensure work sites are evaluated to determine if the employer is in compliance with all relevant OSHA requirements, and to help employers correct hazards, thereby reducing potential injuries and death for their workers.

OSHA in Region VIII proposes to accomplish this through outreach and enforcement activities. Outreach activities have and will continue to include seminars and training sessions with stakeholders, electronic information sharing activities through newsletters and cooperative program agreements with industry associations. Enforcement activities will include, but not be limited to, the inspection of incident trends at the identified facilities, including injury records and medical records as necessary, and safety and health programs to identify and obtain corrections of workplace hazards at all applicable inspection sites.

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- I. **Purpose:** This Instruction renews policies and procedures for focusing enforcement efforts towards reducing occupational injury in Residential Mental Intellectual and Developmental Disability Facilities in North American Industrial Classification System (NAICS) code 623210. This REP will focus on employee safety when interacting with potentially violent residents.
- II. **Scope:** This Instruction applies to workplace violence hazards occurring in NAICS code 623210 within the jurisdiction of Federal OSHA Area Offices in Region VIII.
- III. **Expiration:** This Instruction expires September 30, 2024.
- IV. **Action:** OSHA Region VIII compliance personnel shall follow the procedures contained in this instruction when conducting outreach and enforcement activities.
- V. **References:**
 - A. OSHA Instruction CPL 02-00-163, *Field Operations Manual (FOM)*, September 13, 2019, or the most recent version at the time of the inspection opening conference.
 - B. OSHA Instruction CPL 04-00-002, *Procedures for Approval of Local Emphasis Program (LEPs)*, November 13, 2018.
 - C. OSHA Instruction CPL 02-00-025, *Scheduling System for Programmed Inspections*, January 4, 1995.
 - D. November 12, 2014, OSHA Memorandum: Establishments – Targeting Lists for Emphasis Programs.
 - E. Title 29 Code of Federal Regulations, Part 1910.
 - F. OSHA Instruction CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriations Act, May 28, 1998; Appendix A*, December 18, 2018, or the most recent version at date of inspection opening conference.
 - J. OSHA Instruction CPL 02-02-072, *Rule of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records*, August 22, 2007.
 - K. OSHA Publication OSHA 3148-04R 2015, *Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers*, 2015.
 - L. M. OSHA Instruction CPL 02-01-058, *Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence*, January 10, 2017.
 - M. OIS Trending/Statistics Report, October 1, 2013 to September 18, 2019.

- VI. **Cancellation:** This Instruction cancels Regional Notice 19-05, CPL 04-01, October 1, 2018, Regional Emphasis Program for Workplace Violence Hazards at Residential Intellectual and Developmental Disability Facilities.
- VII. **Action Office:** Billings, Bismarck, Sioux Falls, Denver, and Englewood Area Offices.
- VIII. **Background:** Region VIII has elected to focus on NAICS 623210 because of the history of enforcement activity in the five federal offices within the Region. From October 1 2013, to September 18, 2019 Region VIII has inspected thirteen employers who engaged in providing care for individuals with developmental disabilities in residential group settings. Thirteen citations were issued to the employers for not implementing elements of an effective workplace violence program.

The National Institute for Occupational Safety and Health (NIOSH) defines workplace violence as violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty. Workplace violence is a recognized hazard in the healthcare industry, which includes Residential and Developmental Disability facilities. BLS reports in 2017, three-hundred and ninety-eight workers were fatally injured by other people or by animals. Specifically, in healthcare and social services settings, 27 out of the three-hundred and ninety-eight fatalities that occurred in 2017 were due to homicides. In addition, in 2017, there were 13,080 non-fatal cases of intentional injury by other person(s) which required days away from work. The majority of injuries from assaults at work that required days away from work occurred in the healthcare and social services settings.

The workplace violence rates highlighted in BLS data are corroborated by the Annual National Crime Victimization Survey published by the Bureau of Justice statistics, which estimates that between 1993 and 2009, healthcare workers experienced a 20% higher rate of workplace violence than all other workers. The survey also indicates that workplace violence in the form of assaults occurred at a rate of 21 out of every 1000 workers in 2017. Continuing research by the Bureau of Justice Statistics also notes that workplace violence is underreported—suggesting that the actual rates may be much higher.

- IX. **Inspection Scheduling:** The procedures outlined in November 12, 2014, OSHA Memorandum: Establishments – Targeting Lists for Emphasis Programs will be followed.
- A. The Denver Regional Office will develop a list of potential inspection sites for each area office using available data from the state agencies responsible for oversight of establishments within NAICS 623210 that are Residential Intellectual and Developmental Disability Facilities. In the event that data is not available from these agencies, the Regional and Area Offices will use any other available resources to generate a list of Residential Intellectual and Developmental Disability Facilities. These lists will be sent to the Office of Statistical Analysis (OSA) for randomization and then provided to the area offices.

- B. The Area Offices will remove from the list any establishment that received a programmed inspection originating from the recently expired Nursing and Residential Care Facilities National Emphasis Program (CPL 03-00-016) inspection list.
- C. Establishments that have received an inspection, where employee exposures to workplace violence hazards have been evaluated within the previous 60 months of the creation of the current inspection cycle will be deleted from the list provided either that no serious violations related to workplace violence were cited or that serious violations were cited but a follow-up inspection documented effective abatement of the cited conditions.
- D. The Area Office may delete an establishment if it is determined that:
 - 1. The establishment is a “personal residence” not meeting the definition of NAICS 623210.
 - 2. The establishment is not in the scope of the REP (e.g., the establishment is clearly conducting business other than that covered by the EP.)
 - 3. There is no evidence that the facility exists (e.g., no phone or internet listing; no registration with the Secretary of State; Google Earth or Street View shows conclusively that the business is non-existent.)

The criteria used to delete any establishment must be fully documented by the Area Office.

- E. In the event a cycle is not completed on or before expiration of this Instruction, the cycle will be extended into the new fiscal year, provided this Instruction is renewed. The outstanding cycle will be completed by each Area Office before establishments are selected from the new master list. If the Instruction is not renewed, the outstanding cycle is effectively cancelled and the Area Office is not obligated to complete inspections on the remaining establishments within the cycle.
- F. Un-programmed Inspections: Reports of imminent danger, fatality/catastrophe, complaints and referrals concerning worksites within the targeted NAICS code shall be scheduled as un-programmed inspections. An inspection will be conducted in the event such report, complaint, or referral (including a referral by a CSHO) provides reasonable cause to believe that a serious hazard or a serious violation may exist at the worksite.

X. Inspection Procedures:

- A. Compliance Officers should request the following documents at the opening conference: OSHA 300, 301, Daily Activity Logs, General Event Reports (GERs) Incident Logs, Incident Response/Corrective Action Reports, and Police Reports.
- B. Respect for a resident's privacy must be a priority during all inspection activity.
- C. If employee medical records are needed that are not specifically required by an OSHA standard (e.g., the results of medical examinations, laboratory tests, medical opinions, diagnoses, first aid records, reports from physicians or other health care providers), they must be obtained and kept in accordance with 29 CFR 1913.10, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records, and 29 CFR 1910.1020, Access to Employee Exposure and Medical Records. Medical access orders must be obtained through the Office of Occupational Medicine. See OSHA Directive CPL 02-02-072, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records, dated August 22, 2007, for further information and inspection guidance on obtaining medical access orders.
- D. OSHA Instruction CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence, December 18, 2018, shall be followed during all inspection activity.
- E. Citation Guidance. In accordance with the FOM's general guidance on 5(a)(1) citations (see CPL 02-00-163), and specific guidance in CPL 02-01-058, citations should focus on the specific hazard to which employees are exposed, not the events that caused the incident or the lack of a particular abatement method. The workplace violence directive also contains sample language for hazard alert letters. OSHA Publication, Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers can also be consulted. If there is evidence a 5(a)(1) citation may be warranted, contact the regional office workplace violence coordinator for early intervention and assistance.
- F. If it is determined that the hazard may not be cited under Section 5(a)(1), but there is a State or local code that addresses this hazard and a local agency actively enforces the code, the RA shall refer this to the local enforcement agency.

- XI. Outreach:** Each Area Office must develop and implement a 90 day outreach program that supports the purpose of this REP. At a minimum, any facilities identified by the target list generated by the Office of Statistical Analysis will be issued a letter which explains workplace violence hazards and the strategic goals of this emphasis program at least 90 days prior to the initiation of inspections under this directive. Each AO will also make their best effort to send such a letter to any facilities identified under the NAICS code 623210 that are not included on the target list. The Regional Office will contact each respective state's 21(d) Consultation program to explain the directive and encourage them to develop an outreach strategy.

In addition, during the 90 day period, the Regional Office will provide outreach support to the area offices. Information about the directive will be featured in the Region VIII Compliance Assistance Newsletter. News releases for use by local and national news or trade magazines may also be considered to disseminate information about this REP. Letters explaining the inspection program may be sent to appropriate professional associations and organizations. On-going outreach activities such as meetings, training and speeches with employers, unions, professional associations and other suitable organizations may be conducted based on identified needs or requests. All outreach will reference OSHA publication "Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers."

- XII. OIS Coding:** The following OSHA Information System (OIS) coding requirements address only the coding changes or additions necessary for inspections conducted under this REP:
- A. The OIS Inspection Form for inspections initiated pursuant to the scheduling procedures in section "VII. 1.-2." of this REP shall be marked "Programmed Planned" in the *Initiating Type* block. The code "VIOLENCE" shall be selected in the *Local Emphasis Program* block.
 - B. The OIS Inspection Form for unprogrammed inspections initiated pursuant to Section "VII.3. Unprogrammed Inspections" of this REP (i.e., unprogrammed inspections initiated due to alleged serious hazards at sites under the targeted NAICS codes of this REP) shall be coded in the *Initiating Type* block as an "Unprogrammed" inspection. The code "VIOLENCE" shall be selected in the *Local Emphasis Program* block.
 - C. Refer to OSHA Instruction CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence, January 10, 2017, paragraph XVI for further coding instructions.
 - D. OSHA Memorandum, Inspection Guidance to Inpatient Healthcare Initiatives, dated June 25, 2015, requires all qualifying inspections to use the code "N-03 Nursing-Hosp". NOTE: CSHO's should review the June 25, 2015, memorandum and be familiar with the targeted hazard areas and expand in scope as appropriate.
- XII. Program Report:** No later than midway through the life of the program the Area Offices will provide a report of this REP to the Regional Office.

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