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Violence at Work – Know your Duties



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Recent studies by the Health and Safety Executive ([HSE](#)) have raised fears that 25 NHS Trusts are falling down in their duties to adequately protect their staff from violence in the workplace. Those HSE inspections arose out of an increase in reports of NHS staff being assaulted whilst at work. Such assaults have included three separate killings of nurses and healthcare workers by service users in the last five years.

Indeed, the trade union for NHS staff, [UNISON](#), estimates that there were in excess of 56,000 physical assaults on NHS staff in the years 2016-2017. It has been estimated that 22% of non-fatal workplace injuries suffered by health and social care workers, in the years 2015-2018, were the result of violence.

With such stark figures in mind, it is in the employers' own interests to take the opportunity to consider the scope of their legal obligations to their staff, whilst reviewing whether their working systems are sufficient to meet those requirements.

The HSE define work-related violence as an 'incident in which a person is abused, threatened or assaulted in circumstances relating to their work'. The majority of workplace related violence involves verbal abuse. Mercifully, physical attacks are less common but, as evidenced by the above mentioned cases, the consequences of such incidents can be catastrophic.

Working in the care sector can entail the risk of encountering physical violence in the workplace. That is because service users can be either intoxicated, emotional or suffering from mental illness or dementia. Therefore, these sectors require employers to give proper consideration as to how they can reduce the risk of staff being assaulted.

However, it is not only their employees who benefit from their being afforded a safe working environment. There are also separate benefits for the employer. Aside from the obvious benefit of not being liable in either civil or criminal proceedings, it is the case that employee morale will be improved should the risk of staff being assaulted be eliminated. A happier workforce provides for improved staff retention, which can reduce employer costs through absenteeism or higher insurance premiums for example.

What legal provisions are there?

There are numerous legal provisions imposing duties upon employers to protect their employees from violence in the workplace. For example, the Health & Safety at Work [etc.] Act 1974 imposes upon an employer the duty to protect its employees from all workplace risks so far as is 'reasonably practicable'. Thus, an employer is legally bound to eliminate all risks from the workplace to the extent that is necessary and proportionate based upon foreseeable risk.

Subsequent legislation was enacted which imposes more specific legal obligations, compliance with which will assist an employer in meeting the general duty. Perhaps one of the most noteworthy obligations is the requirement provided by the Management of Health and Safety at Work Regulations 1999. Amongst other obligations, those regulations require an employer to carry out a risk assessment as to workplace risks.

This need to carry out a risk assessment is often looked upon as being either unnecessary or unduly onerous. Therefore, far too many risk assessments are carried out without any proper consideration of how a safer environment can be arrived at. In fact, risk assessments can be an invaluable tool in assisting employers who are determined to adequately protect the safety of their employees. An effective risk assessment will ensure the employer plans, organises, controls and monitors potential risks arising in the workplace.

How to deal with the risk of workplace violence

Therefore, the need to deal with the risk of reasonably foreseeable violence in the workplace can be broken down into four different aspects:

1. An employer needs to ascertain if there is a risk of workplace violence. In the event that there is a history of staff being subjected to violence, then close scrutiny of the facts of those incidents needs to be undertaken. However, the mere fact of there not having been any previous incidents does not lead to the conclusion that there is no risk. Rather enquiry need be made of employees as to any risks of either verbal or physical aggression that they perceive themselves to be at risk of. Indeed, such enquiry might uncover events which ought to have been formally recorded, and which ought then to lead on to changes being made to the relevant reporting practices. Once all actual incidents and possible dangers have been collated, then it is necessary to establish possible outcomes arising from such incidents. This will involve categorisation of the levels of injuries that could reasonably arise from those identified risks. Once the extent of each potential injury risked has been identified, an employer will then be provided with a clearer picture as to what is necessary and proportionate in order to protect employees as far as is reasonably practicable. It goes without saying that the greater the risk of physical harm, the more effort need be expended by an employer in eliminating that risk
2. The next stage of risk assessment requires an employer to determine what action is necessary to eliminate risk. That will require the identification of those employees who may be at risk of harm and the manner in which such harm might be caused them. There is then the need to evaluate each risk in the context of the employer's current health and safety arrangements. Determination needs to be made as to whether those current arrangements are adequate or whether more needs to be done. Those

determinations will need to include consideration as to the working environment, the design of the job and the level of training and information provided to employees.

3. An employer's discovery of the risk of injuries caused by workplace violence and those actions taken by the employer to combat such risks need to be recorded in the employer's health and safety policy statement. That statement then needs to be properly disseminated amongst employees so that they are aware of both their rights and obligations arising out of such a policy being adopted. Providing employees with such knowledge will likely assist them in conforming to the requirements of the improved safe system of work that the employer has provided for them.
4. All risks and protective measures having been identified by an employer in the course of carrying out a risk assessment must be properly recorded. Thereafter regular reviews as to the adequacy of that risk assessment must be undertaken. A further risk assessment must be carried out once more whenever significant changes to working practices have been undertaken or wherever an incident has taken place. Regular periodic reviews need to be undertaken irrespective of whether any changes or incidents have taken place.

How can Lester Aldridge help?

Our specialist [healthcare](#) and [health and safety](#) solicitors have extensive experience and expertise in providing health and safety advice to employers operating within the care sector and industry in general.

We are able to provide expert representation in relation to both the civil and criminal aspects arising out of work-related incidents.

Our knowledge of health and safety law also enables our healthcare solicitors to provide employers with advice as to what constitute safe systems of work with a view to preventing incidents.

Please call 01202 786135 or email online.enquiries@la-law.com to discuss how our health and safety solicitors can help you.