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Division III  
State of Washington  
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COA No. 39659-2-III

Case #: 1034075

SUPREME COURT  
OF THE STATE OF WASHINGTON

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CHARLES HAUSE, an individual, Petitioner,

v.

SPOKANE COUNTY, a Washington Municipal Corporation,  
Respondent.

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**CHARLES HAUSE'S PETITION FOR REVIEW**

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## TABLE OF CONTENTS

<b>I.</b>	<b>IDENTITY OF PETITIONER .....</b>	<b>1</b>
<b>II.</b>	<b>DECISION TO BE REVIEWED .....</b>	<b>1</b>
<b>III.</b>	<b>ISSUES PRESENTED FOR REVIEW.....</b>	<b>1</b>
<b>IV.</b>	<b>STATEMENT OF THE CASE.....</b>	<b>3</b>
	<b>A. THE TRIAL COURT GRANTED RECONSIDERATION OF ITS PRIOR ORDER DENYING SUMMARY JUDGMENT. ....</b>	<b>3</b>
	<b>B. DIVISION III HELD—AS A MATTER OF FIRST IMPRESSION—THAT WORKPLACE VIOLENCE IS OUTSIDE THE SCOPE OF WISHA AND THUS, OUTSIDE THE JURISDICTION OF L&amp;I AND DOSH.....</b>	<b>5</b>
	<b>C. DIVISION III’S DECISION DEPRIVES MR. HAUSE HIS DAY IN COURT AND CO-SIGNS THE TERMINATION OF HIS EMPLOYMENT, WHICH BEGAN SHORTLY AFTER HE SUBMITTED A WORKPLACE VIOLENCE COMPLAINT.....</b>	<b>8</b>
<b>V.</b>	<b>ARGUMENT.....</b>	<b>13</b>
	<b>A. THIS PETITION INVOLVES A MATTER OF FIRST IMPRESSION—THE OUTCOME OF WHICH IMPACTS THE SUBSTANTIAL PUBLIC INTEREST.....</b>	<b>13</b>
	<b>B. L&amp;I AND DOSH HAVE INTERPRETED WISHA AS PROTECTING WORKERS FROM WORKPLACE VIOLENCE FOR OVER 10 YEARS.....</b>	<b>20</b>
	<b>1. WISHA’S Plain Text Covers Matters of Workplace Violence Prevention.....</b>	<b>21</b>
	<b>2. L &amp; I Adopted Mr. Hause’s Construction of WISHA; Division III Has Now Reversed and Unwound This Administrative Precedent. ....</b>	<b>23</b>

<b>VI. CONCLUSION.....</b>	<b>26</b>
<b>VII. CERTIFICATION.....</b>	<b>27</b>

## TABLE OF AUTHORITIES

### Cases

<i>C.J.C. v. Corp. of Catholic Bishop of Yakima</i> , 138 Wn.2d 699 (1999).....	22
<i>Ellis v. City of Seattle</i> , 142 Wn.2d 452 (2000) .....	16
<i>Fode v. Dep't of Ecology</i> , 22 Wn. App. 2d 22 (2022).....	24
<i>Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles</i> , 148 Wn.2d 224 (2002).....	22
<i>Gardner v. Loomis Armored, Inc.</i> , 128 Wn.2d 931 (1996) .....	6
<i>Ng-A-Qui v. Fluke Corp.</i> , 2023 WL 195250 (2023).....	17
<i>Port of Tacoma v. Sacks</i> , 19 Wn. App. 2d 295 (2021) .....	24
<i>Sedlacek v. Hillis</i> , 145 Wn.2d 379 (2001) .....	6
<i>Silverstreak, Inc. v. Wash. Dep't of Labor &amp; Indus.</i> , 159 Wn.2d 868 (2007).....	24
<i>State v. Keller</i> , 143 Wn.2d 267 (2001) .....	22
<i>W. Telepage, Inc. v. City of Tacoma Dep't of Fin.</i> , 140 Wn.2d 599 (2000) .....	24

### Statutes

RCW 49.17.010 .....	14, 15, 21, 22
RCW 49.17.020 .....	22
RCW 49.17.040 .....	17
RCW 49.17.050 .....	17
RCW 49.17.060 .....	14, 15
RCW 49.17.060(1).....	23
RCW 49.17.160 .....	13, 14, 19
RCW 49.17.160(1).....	13, 16

### Rules

Chapter 296-800 WAC .....	19
Chapter 298-800 WAC .....	17
RAP 13.4.....	1
RAP 13.4(b)(4) .....	3, 4
RAP 18.17(a) .....	27

RAP 18.17(c)(11).....	27
WAC 296-800-100.....	15
WAC 296-800-110.....	14, 17
WAC 296-800-11005.....	14, 17, 18
WAC 296-800-11010.....	14, 18
WAC 296-800-11015.....	14, 18
WAC 296-800-11035.....	14, 18, 25
WAC 296-800-120.....	14, 19, 20
WAC 296-800-12005.....	14
WAC 296-800-12005(3).....	19

## **I. IDENTITY OF PETITIONER**

Pursuant to Rule of Appellate Procedure (RAP) 13.4, Charles Hause respectfully petitions the Washington State Supreme Court for review of the decision of the Court of Appeals, Division III, more specifically identified in Section II below.

## **II. DECISION TO BE REVIEWED**

Mr. Hause is petitioning for review of Division III's decision terminating the review of his appeal as a matter of right. Division III filed its decision on July 25, 2024 in this above-captioned appeal. A copy of Division III's decision is attached to this petition as **Appendix A**. Neither party asked Division III to reconsider its decision.

## **III. ISSUES PRESENTED FOR REVIEW**

Mr. Hause seeks review of a single, discrete issue:

Does WISHA's<sup>1</sup> statutory and regulatory scheme establish a clear

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<sup>1</sup> As used herein, the acronym "WISHA" means the Washington Industrial Safety & Health Act, Chapter 49.17 RCW.

mandate of public policy prohibiting employers from retaliating against good faith reporters of workplace violence?

Division III addressed this very issue and concluded—as a matter of first impression—that it does not. In support of its conclusion, Division III declared for the first time that (i) “workplace violence does **not** fall under the rubric of WISHA” and (ii) “WISHA rules do **not** mention workplace violence.” App. A, pgs. 20, 28 (emphasis added).

Division III’s decision removes matters of workplace violence prevention from the purview of WISHA and its regulatory bodies, L&I<sup>2</sup> and DOSH.<sup>3</sup> Mr. Hause respectfully submits this decision is erroneous and unsupported by WISHA’s text and legislative intent. He further submits that the decision ignores and, in fact, abrogates a decades’ worth of materials published by L&I and DOSH.

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<sup>2</sup> As used herein, the acronym “L&I” refers exclusively to the Washington State Department of Labor & Industries.

<sup>3</sup> As used herein, the acronym “DOSH” refers exclusively to L&I’s Division of Occupational Safety & Health.

The issue presented for review invokes the public’s substantial interest in preventing, investigating, and responding to workplace violence. The issue presented impacts each and every employer, employee, and workplace in the state of Washington. Indeed, the issue directly impacts the job security and mental, emotional, and physical safety of over 4,000,000 citizens working in the state of Washington.<sup>4</sup>

Review of this issue is thus appropriate under RAP 13.4(b)(4), which permits the Washington State Supreme Court to review any issues “of substantial public interest.”

#### **IV. STATEMENT OF THE CASE**

##### **A. THE TRIAL COURT GRANTED RECONSIDERATION OF ITS PRIOR ORDER DENYING SUMMARY JUDGMENT.**

The relevant portion of this case reached Division III after Mr. Hause appealed the Trial Court’s order granting Respondent Spokane County’s Motion for Reconsideration (the “Reconsideration Order”). CP 664, 790-92. In the

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<sup>4</sup> According to the U.S. Bureau of Labor Statistics, Washington State’s civilian labor force consisted of an estimated 4,017,400 individuals in July 2024 (<https://www.bls.gov/eag/eag.wa.htm>).

Reconsideration Order, the Trial Court declared it'd "change[d] its mind" and decided to reverse and vacate its prior order denying the summary judgment dismissal of Mr. Hause's wrongful discharge in violation of public policy claim. *Id.*; *see also* CP 652-59. The Trial Court-level briefing relevant to Mr. Hause's appeal of the summary dismissal of his wrongful discharge claim is thus found within the reconsideration briefing, not the summary judgment briefing.<sup>5</sup>

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<sup>5</sup> Division III decided—in no uncertain terms—the merits of the issue Mr. Hause petitions this Court to review under RAP 13.4(b)(4). *See, e.g.*, App. A, pgs. 21, 28. However, before doing so, Division III explained Mr. Hause failed to preserve his WISHA-related arguments for appeal because he did not brief them to the Trial Court. *See, e.g.*, App. A, pgs. 21, 28. Respectfully, Division III is incorrect. **Mr. Hause spent 100 pages briefing the Trial Court on the very same WISHA-promulgated WACs, WISHA statutes, and L&I/DOSH interpretations that he relies upon on appeal.** *See, e.g.*, CP 682-782. This briefing occurred in response to the County's Motion for Reconsideration. *Id.* Mr. Hause successfully defeated the County's summary judgment motion to dismiss the wrongful discharge claim. He lost on reconsideration—not on the original summary judgment briefing. Thus, Mr. Hause successfully preserved his WISHA arguments for appeal. The Trial Court reviewed the briefing on these matters **before** it

**B. DIVISION III HELD—AS A MATTER OF FIRST IMPRESSION—THAT WORKPLACE VIOLENCE IS OUTSIDE THE SCOPE OF WISHA AND THUS, OUTSIDE THE JURISDICTION OF L&I AND DOSH.**

Mr. Hause's wrongful discharge claim is and was predicated on the allegation that Washington State recognizes a clear mandate of public policy prohibiting employers from retaliating against good faith reporters of workplace violence. *See, e.g.*, CP 655-56. Because clear mandates of public policy may arise from statutory or regulatory schemes, Mr. Hause rested his claim on WISHA statutes and regulations. CP 655-56, 688-93; *Gardner v. Loomis Armored, Inc.*, 128

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issued its Reconsideration Order and granted summary judgment on the wrongful discharge claim.

Because Division III ruled on the merits of the issue Mr. Hause petitions this Court to review, Mr. Hause did not assign independent error to this aspect of Division III's decision. To the extent it's necessary, Mr. Hause respectfully uses this footnote to assign error to Division III's conclusion that he waived his WISHA-related arguments. Division III erred in this regard for the very reasons provided herein. Mr. Hause briefed the issue extensively and the County responded in its reply materials. All of this briefing occurred **before** the Trial Court granted the Motion for Reconsideration and dismissed the wrongful discharge claim.

Wn.2d 931, 940-41 (1996); *Sedlacek v. Hillis*, 145 Wn.2d 379, 388-89 (2001). The specific WISHA statutes and regulations cited by Mr. Hause are briefed the Argument Section below.

Mr. Hause devoted the majority of his 100-pages-worth of briefing in opposition to the County's Motion for Reconsideration to WISHA statutes and regulations. *See, e.g.*, CP 682-782. These same WISHA statutes and regulations dominated Mr. Hause's briefing on appeal as well. *See generally Appellant's Reply Br.* Division III nevertheless held—for the first time—that:

**WISHA cannot establish the clear mandate of public policy Hause claims it does. Workplace violence does not fall under the rubric of WISHA.**

App. A, pg. 28 (emphasis added). Because the issue is one of first impression for the courts, it's not surprising that Division III's holding was unaccompanied by citations to supporting precedent. *See generally id.* What is surprising, however, is the lack of analysis and attention Division III's decision affords to

consequences of its newly announced rule. *Id.* Division III's decision neither explains the rationale behind nor articulates any countervailing policy considerations justifying the chilling effect the newly announced rule will have on good faith reporters of workplace violence. *Id.* Division III's decision also does not offer an explanation as to why L&I and DOSH's long-standing interpretation of WISHA deserves total abrogation instead of the usual administrative deference. *Id.* L&I and DOSH's position on the matter is briefed in detail in Section B(2) of the Argument Section below.

Indeed, there is only one other instance in which Division III's 38-page decision discusses the relationship between workplace violence and WISHA. *See generally id.* Division III writes on page 21 of its decision:

**“WISHA rules do not mention  
workplace violence.”**

App. A, pg. 21 (emphasis added).

**C. DIVISION III’S DECISION DEPRIVES MR. HAUSE HIS DAY IN COURT AND CO-SIGNS THE TERMINATION OF HIS EMPLOYMENT, WHICH BEGAN SHORTLY AFTER HE SUBMITTED A WORKPLACE VIOLENCE COMPLAINT.**

The County hired Mr. Hause in January 2012 as a Forensic Technician. CP 499. In June 2016, the County promoted Mr. Hause to a Forensic Specialist. CP 327. Mr. Hause enjoyed a sterling reputation; he was considered by management and peers alike to be a tremendously productive team member with exceptional kindness and interpersonal communication skills. *See, e.g.*, CP 321-22, 328-348. The County’s then-Sheriff Ozzie Knezovich awarded Mr. Hause the coveted Medal of Merit on January 18, 2020, and over the years, Mr. Hause’s two immediate supervisors raved about him in his annual performance evaluations. CP 328-48. Mr. Hause’s employee file includes several comments from supervisors about his “courte[ous],” “professional[,]” “perce[petive],” and “team player” nature. CP 329-48. Mr. Hause’s peers likewise

testified at the Trial Court-level to Mr. Hause's imminently kind, productive, and professional disposition. CP 538-67.

It wasn't until shortly after Mr. Hause drafted and submitted a Workplace Violence Complaint against a favored, coddled co-worker, Trayce Boniecki, that the County began characterizing Mr. Hause as a lying trouble-maker. CP 410-12. Mr. Hause's Workplace Violence Complaint addressed two specific issues. *Id.*

First, Mr. Hause complained about a prior violent outburst in which Ms. Boniecki screamed profanities at a co-worker and hurled a water bottle across toward co-workers seated across from her in the County Forensic Unit's open workspace. *Id.* And second, Mr. Hause complained he felt compelled to submit his Workplace Violence Complaint to the County's Office of Risk Management because management within the Sheriff's Office was woefully failing to provide a safe and secure workplace for those in its Forensic Unit. *Id.*

Notwithstanding County policy and Mr. Hause's request otherwise, the Office of Risk Management sent the Workplace Violence Complaint directly to the Sheriff's Office and asked its management to investigate themselves and Ms. Boniecki. CP 320, 408-12, 426-27, 513-14, 530, 532-34. The Sheriff's Office then instructed Lt. Khristopher Thompson, a gentlemen who testified that, prior to his deposition,

**(i) He was not "familiar" with the County's Workplace Violence Policy;**

**(ii) He had never read the County's Workplace Violence Policy;**

**(iii) He did not know if any of the supervisors in the Forensic Unit (i.e., his direct subordinates) were aware of their obligations to create a safe work environment pursuant to the Workplace Violence Policy; and**

**(iv) He did not know if any of the supervisors in the Forensic Unit (who are, again, his direct subordinates) were following their obligation to create a safe work**

**environment pursuant to the Workplace Violence Policy.**

CP 312, 314 (emphasis **added**). Having read the Workplace Violence Policy for the first time at his **d**eposition, Lt. Thompson **s**uddenly found merit to Mr. Hause's Workplace Violence Complaint:

**Q. But my question was whether or not you think what Miss Boniecki **d**id with respect to the water bottle incident falls within this **d**efinition as you sit here today?**

**A. Yes.**

**Q. You **d**o?**

**A. I believe it was, yes . . . My interpretation of it [the Workplace Violence Policy] would be that she violated [the] policy in this aspect and it was **a**ddressed.**

CP 313 (emphasis **added**).

Lt. Thompson nevertheless **c**oncluded his investigation with the **f**inding that Mr. Hause's Workplace Violence Complaint was not only baseless but **i**ntended to harass Ms.

Boniecki. CP 313, 412-21, 475-76, 496-98. Indeed, two days later, the Sheriff's Office commenced its own investigation into Mr. Hause for allegedly (i) making false and misleading statements in his Workplace Violence Complaint, (ii) "harassing" Ms. Boniecki and (iii) failing to report his Workplace Violence Complaint to the appropriate individuals. CP 475-76, 496-98; *see also* CP 199-208, 502-05.

Mr. Hause's Opening Brief details specific examples of the County's disparate treatment of Ms. Boniecki—who the men in the Sheriff's Office fiercely protected—and Mr. Hause—who the men in the Sheriff's Office resented for filing a complaint. *See, e.g., Appellant's Opening Br.*, pgs. 26-31; *see also* CP 129-31, 373, 488-89, 496-98, 502-06, 508, 562, 593-94, 641-51. Suffice it to say for purposes of this Petition for Review, the investigation launched against Mr. Hause after receiving his Workplace Violence Complaint ended with the termination of Mr. Hause's employment. CP 493-94, 503.

## V. ARGUMENT

### A. THIS PETITION INVOLVES A MATTER OF FIRST IMPRESSION—THE OUTCOME OF WHICH IMPACTS THE SUBSTANTIAL PUBLIC INTEREST.

RCW 49.17.160(1) is WISHA's anti-retaliation statute—i.e., it prohibits employers from taking adverse employment actions against employees who, in good faith, report unsafe work environments. Division III's is the first court decision to address whether good faith reporters of workplace violence are protected by WISHA's anti-retaliation statute (RCW 49.17.160). App. A, pgs. 21, 28. Mr. Hause respectfully submits that Division III erroneously resolved this issue to the detriment not only of himself but to the 4,000,000 members of Washington's workforce.<sup>6</sup>

Among others, the following WISHA statutes and regulations support Mr. Hause's position that workplace

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<sup>6</sup> Please see Footnote 5 above regarding Division III's erroneously conclusion that Mr. Hause failed to brief and preserve his WISHA-related arguments.

violence is covered by the protections afforded to Washington

State workers:

**Statutes**

**RCW 49.17.010**

**RCW 49.17.060**

**RCW 49.17.160**

**Regulations**

**WAC 296-800-110**

**WAC 296-800-11005**

**WAC 296-800-11010**

**WAC 296-800-11015**

**WAC 296-800-11035**

**WAC 296-800-120**

**WAC 296-800-12005**

As indicated in CPs 682-782 and in Footnotes 5 and 6 herein,

Mr. Hause briefed each of these foregoing authorities to the

Trial Court and to Division III. *Appellant's Opening Br.*, pg.

44-45; *Appellant's Reply Br.*, pg. 3-4. Division III's decision is

flatly incorrect when it states otherwise. *See, e.g.*, App. A, pg. 21.

Of specific importance to the existence of the first public policy advanced is RCW 49.17.010, wherein the Washington State Legislature (the “Legislature”) declared:

**It is in the public interest for the welfare of the people of the state of Washington . . . to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington.**

*Id.* (emphasis added). WAC 296-800-100, which was promulgated by L&I pursuant to WISHA, likewise characterizes WISHA’s enactment as a legislative “requir[ement] that employers [] provide safe and healthful workplaces for all employees.” *Id.* To that end, RCW 49.17.060 requires “[e]ach employer . . . [to] furnish each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees.”

Further, as noted above, WISHA's anti-retaliation statutes provides:

**No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter.**

RCW 49.17.160(1) (emphasis added). The plain language of this statute protects and serves the public's interest in enjoying safe and healthy workplaces by prohibiting employers from retaliating against good faith reporters of workplace violence.

*Id.*

Given the important public interest it serves, this anti-retaliation statute alone is sufficient to satisfy the Perritt Test's clarity element. *See, e.g., Ellis v. City of Seattle*, 142 Wn.2d 452, 459-60 (2000) (holding the clarity element of the Perritt

Test by citing WISHA); *Ng-A-Qui v. Fluke Corp.*, 2023 WL 195250, \*5 (2023) (holding the plaintiff established a “wrongful discharge claim . . . based on public policy as established by WISHA”).

The public policy advanced by Mr. Hause, however, finds further support in Chapter 298-800 WAC, the regulatory scheme administered and enforced by L&I and DOSH pursuant to WISHA. *Accord* RCW 49.17.040, .050. These regulations require private and public employers in this state:

- (i) “[T]o provide a safe and healthy workplace free from recognized hazards,”<sup>7</sup> WAC 296-800-110,
- (ii) “[T]o provide . . . employees a workplace free from recognized hazards<sup>8</sup> that are causing, or are

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<sup>7</sup> “A hazard is recognized if it is commonly known in the employer’s industry, or if there is evidence that the employer knew or should have known of the existence of the hazard, or if it can be established that any reasonable person would have recognized the hazard.” WAC 296-800-11005.

<sup>8</sup> See Footnote 7 of this Petition for the definition of “recognized hazards.”

likely to cause, serious injury or death,” WAC 296-800-11005,

- (iii) “[To] provide and use safety devices, safeguards, and use work practices, methods, processes, and means that are reasonably adequate to make . . . [the] workplace safe,” WAC 296-800-11010,
- (iv) To refrain from “interfere[ing] with [its employees’] use of any method or process adopted for the protection of any employee,” *Id.* at (3),
- (v) To “do everything reasonably necessary to protect the life and . . . employees,” *Id.* at (4),
- (vi) To “prohibit employees from entering, or being in, any workplace that is not safe,” WAC 296-800-11015, and
- (vii) To “establish, supervise, and enforce rules that lead to a safe and healthy work environment that are effective in practice,” WAC 296-800-11035.

Private and public employees, on the other hand, are required to:

- (i) “[P]lay an active role in creating a safe and healthy workplace and comply with all applicable safety and health rules,” WAC 296-800-120,
- (ii) “[C]oordinate and cooperate with all other employees in the workplace to try and eliminate on-the-job injuries and illnesses,” WAC 296-800-12005(3), and
- (iii) “[To] . . . [d]o everything reasonably necessary to protect the life and safety of employees,” *Id.* at (10).

Like RCW 49.17.160, WAC 296-800-120 promotes the public interests served by Chapter 296-800 WAC by prohibiting retaliation against good faith reporters:

**Employees may discuss and participate in any WISHA safety and health related practice and may refuse to perform dangerous tasks without fear of discrimination. Discrimination includes: Dismissal, demotion, loss of seniority, denial of a promotion, harassment, etc. (see chapter 296-360 WAC, Discrimination) pursuant to RCW 49.17.160 for a complete description**

of discrimination and the department's responsibility to protect employees.

WAC 296-800-120 (emphasis added).

**B. L&I AND DOSH HAVE INTERPRETED WISHA AS PROTECTING WORKERS FROM WORKPLACE VIOLENCE FOR OVER 10 YEARS.**

Notwithstanding the foregoing WACs and RCWs, Division III and the Trial Court accepted and adopted the County's argument that incidents of workplace violence are carved out of WISHA and L&I's domain. *See, e.g., Resp. Opening Br.*, pg. 53; App. A, pgs. 21, 28. Though Division III did not elaborate on its decision, the County justified its position by arguing extending WISHA's protections to workplace violence will "encourag[e]" employees to "report[] . . . workplace safety issues in an extremely broad sense that encompasses even workplace violence." *Resp. Opening Br.*, pgs. 54-5. But, for the reasons provided below and in his Trial Court- and Division III-briefing (see CP 682-782 and Footnotes 5 and 6 herein), Mr. Hause submits that this is, in fact, the

precise outcome the Legislature intended when it enacted

WISHA. *See, e.g.*, RCW 49.17.010.

**1. WISHA’s Plain Text Covers Matters of Workplace Violence Prevention.**

As noted above, the plain language of RCW 49.17.010 provides in pertinent part that the Legislature enacted WISHA to serve “**the welfare of the people . . . [and] assure, insofar as may reasonably be possible, safe and healthy working conditions for every man and woman working in this state of Washington.**” *Id.* (emphasis added). This text is plain, unadorned, and unambiguous. Its extraordinarily sweeping nature should not be mistaken for ambiguity. The scope of a statute is the Legislature’s prerogative. What matters is simply that RCW 49.17.010 articulated WISHA’s broad scope and application enthusiastically, plainly, and unambiguously. *Id.* The Legislative intent behind WISHA can and should, therefore, be determined by giving the words in RCW 49.17.010 their “plain and ordinary meaning.” *C.J.C. v. Corp.*

*of Catholic Bishop of Yakima*, 138 Wn.2d 699, 708 (1999); *see also State v. Keller*, 143 Wn.2d 267, 276 (2001) (holding that courts should derive the meaning of a plain and unambiguous statute from “the wording of the statute itself,” without “look[ing] beyond the language [] or consider[ing] the legislative history”).

The most relevant portion of RCW 49.17.010’s text for purposes of Mr. Hause’s wrongful discharge claim and for this Petition is the phrase, “***safe and healthful working conditions.***” *Id.* (emphasis added). The Legislature declined to define or otherwise limit this phrase’s meaning. *See, e.g.*, RCW 49.17.020. The phrase therefore enjoys the full breadth and latitude afforded to it by the plain and ordinary meaning of its component parts. *Keller*, 143 Wn.2d 267, 276 (2001); *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239 (2002) (“Legislative definitions provided in a statute are controlling, but in the absence of a statutory definition, courts may give a

term its plain and ordinary meaning by reference to a standard dictionary”).

Based on the foregoing analysis, the Legislature intended WISHA to capture the occurrence, threat, and prevention of workplace violence. A foreseeable risk of violence in the workplace is obviously a serious threat to an employer’s ability to furnish its employees a safe and healthy workspace. *Accord* RCW 49.17.060(1) (“Each employer . . . shall furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees”). Accordingly, Division III erred in removing workplace violence from the protections of WISHA and its regulatory bodies. App. A, pgs. 21, 28.

**2. L & I Adopted Mr. Hause’s Construction of WISHA; Division III Has Now Reversed and Unwound This Administrative Precedent.**

L&I and DOSH’s long-standing interpretation of WISHA supports Mr. Hause’s position. When textual ambiguity exists, courts generally defer to the interpretation adopted by the

agency charged with administering and enforcing the statute. *Fode v. Dep't of Ecology*, 22 Wn. App. 2d 22, 33 (2022); *W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 611-12 (2000). Further, if an administrative regulation is at issue, courts afford “great deference” to the interpretation of the agency that promulgated it. *Port of Tacoma v. Sacks*, 19 Wn. App. 2d 295, 312 (2021) (emphasis added). The great deference afforded to agencies extends not only to interpretations found within “formalized [agency] rules,” but to those manifested in “agency polic[ies]” or “practice[s].” *Id.* at 304-05. The only exception is something not present here—a “compelling” indication that the agency’s interpretation conflicts with the legislative intent of the corresponding statute. *Id.* (quoting *Silverstreak, Inc. v. Wash. Dep't of Labor & Indus.*, 159 Wn.2d 868, 884-85 (2007)).

Over a decade ago, WISHA’s arm for enforcement, L&I and DOSH, issued a directive interpreting the statutory scheme as covering issues of employee-on-employee violence in the

workplace. App. B, pgs. 1-3. This directive, titled “DOSH Directive 5.05,” instructs L&I and DOSH staff how to “appropriate[ly] appl[y]” WISHA policies, practices, and procedures to issues concerning workplace violence. *Id.* at pg. 1, ¶ 1. For instance, L&I and DOSH staff are directed to accept and investigate “complaints alleging a work place violence or security hazard according to . . . the DOSH Compliance Manual.” *Id.* at pg. 3, ¶ V(B) (emphasis added). L&I and DOSH staff are also authorized to cite employers with violations of WAC 296-800-11035 whenever an “employer clearly failed to respond in a reasonable manner” to “**employee-on-employee violence**.” *Id.* at pg. 5, ¶ V(G) (emphasis added).

Years later, in 2015, L&I published a comprehensive, 52-page-long guidebook titled, “Workplace Violence Awareness and Prevention for Employers and Employees.” App. C. Like Directive 5.05, the Guidebook expressed L&I’s conclusion that workplace violence is and was an issue squarely within WISHA’s purview. *See, e.g., Id.* at pgs. 1-3; *Id.* at App. C. L&I

defined the term “workplace violence” as “any verbal assault, threatening behavior, or physical assault occurring in or arising from the worksite.” *Id.* at pg. 2. It then proceeded to classify “violence by a co-worker” as one of four types of workplace violence. *Id.* at pg. 5.

The policies, practices, and standards announced in the L&I Directive and Guidebook continue to dictate the behavior of L&I staff, private and public employers and employees today. L&I’s position on the matter is clear and has remained so for over a decade now: WISHA’s statutory and regulatory scheme covers workplace violence.

## VI. CONCLUSION

Should the Court accept review and determine that workplace violence falls within the purview of WISHA and its anti-retaliation statute, then Mr. Hause has successfully established a clear mandated of public policy implicated and violated by his termination. For a broader discussion of the other elements of this claim, Mr. Hause respectfully directs the

Court's attention to his briefing before the Trial Court and Division III. Mr. Hause does not address these other elements in this petition because Division III never reached them in its decision. *See* App. A.

Accordingly, pursuant to RAP 13.4(b)(4), Mr. Hause respectfully requests that the Supreme Court grant his petition and accept review of the Court of Appeals, Division III's decision.

## **VII. CERTIFICATION**

Pursuant to RAP 18.17(b), Mr. Hause hereby certifies that this Petition for Review complies with the formatting requirements of RAP 18.17(a) and has 4,028 words pursuant to RAP 18.17(c)(11).

RESPECTFULLY SUBMITTED this 26th day of August, 2024.

RIVERSIDE NW LAW GROUP, PLLC

  
\_\_\_\_\_  
MAX K. ARCHER, WSBA No. 54081  
Counsel for Petitioner



## CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 26th day of August, 2024, the foregoing was filed with the Washington State Supreme Court and Court of Appeals, and delivered to the following persons in manner indicated:

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Max K. Archer

## **APPENDIX “A”**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

CHARLES HAUSE, an individual,	)	
	)	
Petitioner,	)	No. 39659-2-III
	)	
v.	)	
	)	
SPOKANE COUNTY, a Washington	)	UNPUBLISHED OPINION
Municipal Corporation,	)	
	)	
Respondent.	)	

FEARING, J. — Charles Hause sues his former employer, Spokane County, for wrongful termination of his employment under numerous causes of action. The Spokane County sheriff fired Hause after Hause filed a workplace violence complaint and the sheriff concluded that Hause misrepresented facts during the investigation of his complaint. We affirm the superior court’s summary judgment dismissal of Hause’s causes of action.

FACTS

We take the facts from affidavits filed in support of and in opposition to the defendant Spokane County’s summary judgment motion. Although we narrate some of Spokane County’s evidence, we view the facts in a light favorable to nonmoving party, Charles Hause.

In January 2012, Spokane County hired Charles Hause as a forensic technician in the Spokane County Sheriff's Office. He processed latent fingerprints. In June of 2016, Hause was promoted to forensic specialist. Hause garnered a positive employment record and, in 2020, then-Sheriff Ozzie Knezovich awarded him a Medal of Merit.

During the time of Charles Hause's employment with the Spokane County Sheriff's Office, the county maintained employment policies compiled in the Spokane County Personnel Policy Manual. The manual applied to sheriff department employees, among other employees.

We quote some of the sections of the Spokane County Personnel Policy Manual important to Charles Hause's suit. Section 450 of the Personnel Policy Manual addressed protecting employees from retaliation for whistleblowing. The section sought to:

encourage reporting by [the county's] employees and/or officers of improper governmental action taken by Spokane County officers or employees, and protect County employees and/or officers who have reported improper governmental actions in accordance with applicable laws.

Clerk's Papers (CP) at 521 (underlining omitted). Section 450 defined "improper governmental action" as:

1. "Improper governmental action" means any action by a Spokane County officer or employee:
  - a. That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and

b. That (i) is in violation of any federal, state, or local law or rule, (ii) is an abuse of authority, (iii) is of substantial and specific danger to the public health or safety or (iv) is a gross waste of public funds.

“Improper governmental action” does not include personnel actions, including employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployment, performance evaluations, reductions in pay, dismissal, suspensions, demotions, violations or collective bargaining or civil service laws, alleged violations of labor agreements or reprimands or actions taken pursuant to those statutory provision enumerated in RCW 42.41 .020(1)(b).

CP at 522. The same section also outlined the procedure for reporting improper governmental conduct:

#### Procedures for Reporting

Spokane County employees, who become aware of improper governmental actions, whether within their office or another County office, should raise the issue first with their immediate supervisor. The immediate supervisor for any County employee hired or appointed by an elected official, other than the Board of County Commissioners or any of its department heads, shall be the elected official hiring or appointing the employee. The immediate supervisor for those employees hired by the Board of County Commissioners or any department head, shall be the department head of the office in which they are employed. For the purpose of this policy, a department head shall be defined as a person in charge of a major administrative division of County government under the direct control of the Board of County Commissioners, who reports directly to the County Administrative Officer. The employee shall submit a written report to the supervisor, or to a person designated by the supervisor, stating in detail the basis for the employee’s belief that an improper governmental action has occurred. Where the employee reasonably believes the improper governmental action involves his or her immediate supervisor, the employee may raise the issue directly with the County Administrative Officer or such other person as may be designated by the County Administrative Office to receive reports of improper governmental action. Where the employee reasonably believes the improper governmental action involves the County Administrative Officer, the employee may raise the issue directly with the chairman of the

Board of County Commissioners. Where the employee reasonably believes the improper governmental action involves a Spokane County Commissioner, the employee may raise the issue directly with the Spokane County Prosecuting Attorney.

Spokane County employees who fail to make a good faith attempt to follow the County's procedures in reporting improper governmental action shall not receive the protection provided by the County in these procedures.

CP at 523-24. The following subsection of Section 450 of the Spokane County Personnel Policy Manual identified whistleblower protections for county employees:

Protection Against Retaliatory Actions

Spokane County Elected Officials and employees are prohibited from taking retaliatory action against a County employee because he or she has in good faith reported an improper governmental action in accordance with these policies and procedures.

Employees who believe that they have been retaliated against for reporting an improper governmental action should advise their immediate supervisor, the Human Resources Director, or his/her designee. The immediate supervisor or Human Resources Director shall take appropriate action to investigate and address complaints of retaliation.

CP at 524.

Section 605 of the Personnel Policy Manual housed the county's Workplace Violence Prevention Program. Subsection VI-D of Section 605 directed employees to report known or suspected incidents of workplace violence. Elsewhere in the manual the prevention program defined "workplace violence" as:

any behavior that is violent, threatens violence, coerces, harasses, intimidates others, interferes with an individual's legal rights of movement or expression, or disrupts the workplace of the [c]ounty's ability to provide services to the public.

CP at 512. One example given of workplace violence was the throwing of objects. CP

513. Subsection VII A I of Section 605 declared:

Workplace violence, threats of workplace violence, or observations of workplace violence shall be reported immediately to the employee's immediate supervisor and the Risk Management Department. A WVPP Incident Report Form shall be submitted to Risk Management.

CP at 244.

The Spokane County Sheriff's Office kept its own Policy Manual. An unnumbered opening section of the manual announced the expectation that a department employee refrain from

"pot stirring/rumor mongering-intentionally causing dissention/disruption."

CP at 175. Section 340.3.5(g) of the manual barred:

"[d]isparaging remarks or conduct to the extent that such remarks or conduct disrupts the efficiency of the [sheriff's] [d]epartment, subverts the good order, efficiency and discipline of the [d]epartment, or which would tend to discredit any member thereof."

CP at 175. Section 340.4.5(h) prohibited:

"[k]nowingly making false, misleading or malicious statements that are reasonably calculated to harm or destroy the reputation, authority or official standing of the [d]epartment or members thereof."

CP at 174 (some alterations in original). Sheriff's office policy 1020.2.2(a) demanded that

[a] department employee becoming aware of alleged misconduct shall immediately notify a supervisor.  
CP at 175.

During the employment of Charles Hause, Spokane County also employed Trayce Boniecki as a forensic specialist in the sheriff's office. Lieutenant Lyle Johnston supervised both Boniecki and Hause. Boniecki's employment record included negative reviews and evaluations. Hause occasionally complained about the work productivity, attendance, and team play of Boniecki. This appeal focuses on two purported acts of Boniecki: the throwing of a plastic water spray bottle and the "keying" of another employee's car. "Keying" refers to purposely scratching or gouging a car's paint with a key.

In February of 2020, Trayce Boniecki and coworker, Lynette Estridge, argued over the process of ordering spray bottles. Later, in frustration, Boniecki knocked an empty bottle from Estridge's desk. The bottle struck the outer cubicle of a coworker. Estridge was not present in the work area when this occurred.

Trayce Boniecki reported her argument with Lynette Estridge and the thumping of the water bottle to her direct supervisor, Lynn Johnston. Johnston verbally counseled Boniecki. Boniecki promised no similar incident would occur again.

On April 1, 2020, Lori Preuninger, a former employee in the Spokane County Sheriff's Office's forensic unit, reported to police that someone keyed her car in a county parking lot. The car suffered a long scratch. Security footage showed Trayce Boniecki

ambling by Preuninger's car. Law enforcement and the Spokane County Sheriff's Office's Internal Affairs office investigated the keying. On July 9, 2020, the Spokane City prosecutor announced that, while probable cause supported that Boniecki had committed malicious mischief in the second degree, the prosecutor would file no charges due to insufficient evidence to obtain a guilty verdict beyond a reasonable doubt. The Internal Affairs office's investigation ended with a verdict of "not sustained" due to insufficient evidence. Charles Hause was friends with Preuninger.

In the spring of 2020, Charles Hause exercised family leave from work related to the birth of a child. In his deposition, Hause testified that, before taking family leave, he criticized supervisors for poor supervision. While on leave, Hause traded unsympathetic text messages about Trayce Boniecki and sheriff's department officials with his coworker John Schlosser. He called Boniecki a "sociopath." He wrote about Boniecki's work performance:

You can completely write off any work coming from her today. Oh wait, that's every day.

CP at 140. Hause wrote to Schlosser about Undersheriff John Nowels:

. . . Nowels is a spineless coward who will just placate to the underperforming employees.

CP at 124. Because his direct supervisor, Lyle Johnston, treated Boniecki well, Hause commented about Johnston:

[He] was drinking from the koolaid [sic].

CP at 677. In August 2020, Hause texted about Boniecki and other coworkers:

[W]hen I get back, I'm coming hard after them. I made their life pretty miserable for my last 2 weeks there, and it's only going to get worse for them on my return.

CP at 138.

Charles Hause returned from family leave on September 8, 2020. On September 9, Lieutenant Khris Thompson convened a meeting with the forensics unit staff. Hause attended the meeting. Thompson explained that the criminal and internal affairs investigations into Trayce Boniecki's conduct had ended and no criminal charges would be filed. Also, the internal investigation had resulted in a finding of "not sustained." CP at 151. Thompson warned that anyone who retaliated against or rumor-mongered about Boniecki could be subject to discipline.

On September 18, 2020, Charles Hause filed a workplace violence complaint with the risk management department of Spokane County. The complaint alleged that Trayce Boniecki violated sheriff's office policy when throwing a plastic water bottle in February 2020. Hause did not send a copy of his complaint to his direct superiors.

When drafting and filing the complaint, he consulted his union representative, Gordon Smith.

Steve Bartel of the risk management office investigated Charles Hause's complaint and concluded the incident did not rise to the level of workplace violence. The risk management office then forwarded Hause's workplace violence complaint to the

Spokane County Sheriff's Office Internal Affairs division. The division assigned Lieutenant Khris Thompson to investigate. Thompson sought to discern whether supervisor Lyle Johnston knew of the bottle incident and, if so, whether Johnston properly handled the incident. In early October 2020, Thompson ended his investigation and reported to Spokane County Undersheriff John Nowles that months earlier Johnston, Trayce Boniecki's supervisor, learned of the water bottle incident and resolved the event by informal coaching, guidance, and direction to Boniecki.

Khris Thompson's report to Undersheriff John Nowles disquieted Nowles. Before filing the workplace violence complaint, Charles Hause had not notified supervisors or anyone in his chain of command at the sheriff's office of any workplace violence or that he intended to report Trayce Boniecki's conduct to the county risk management office. Boniecki allegedly threw the bottle in February 2020, but Hause did not submit his complaint until September 2020. Hause's workplace violence complaint insinuated that he saw Boniecki throw the water bottle. Thompson's investigation, however, established that Hause did not observe the purported tossing of the bottle. Hause's complaint identified coworker Lynette Estridge as a victim of the water bottle toss, but the investigation revealed she was no longer present when Boniecki knocked the bottle, and she not consider herself a victim.

On October 9, 2020, Spokane County Undersheriff John Nowles ordered an Internal Affairs investigation into whether the conduct of Charles Hause breached

sheriff's department policies 340.3.5(g), 340.4.5(h), and 1020.2.2(a). The policies precluded rumormongering and false reporting and required immediate reporting of another employee's misconduct. Nowells assigned Internal Affairs Investigator Lieutenant Andrew Buell to assist in the investigation of Hause.

On October 21, 2020, during the investigation of Charles Hause, Lieutenant Andrew Buell interviewed Hause. At that time, Hause stated that he had communicated only once with another forensic unit employee, John Schlosser. The Spokane County Sheriff's Office had information that Hause sent at least two text messages to Schlosser.

During the October 21 interview, Charles Hause first commented that, when preparing his workplace violence complaint, he consulted Spokane County policy manual and the Lexipol policy manual. Later, Hause admitted he had not reviewed the Lexipol policy manual. Lexipol, a national company, assists law enforcement agencies with risk management.

On December 15, 2020, during a second interview by Andrew Buell of Charles Hause, Hause again denied any communications with John Schlosser other than one conversation. Hause declined to show Buell text messages sent to Schlosser on Hause's private phone. As a result of the two interviews, the sheriff's department added an allegation of providing false or misleading statements in the charges against Hause.

After the completion of the investigation of Charles Hause, Undersheriff John Nowles compiled a report that he forwarded to Spokane County Sheriff Ozzie

Knezovich. In turn, Sheriff Knezovich convened a hearing with Hause and his union representative. Knezovich sustained each allegation. On three of the allegations, Knezovich imposed discipline less than employment termination, but, on the finding of supplying false or misleading statements to harm the reputation of another, Sheriff Knezovich imposed termination.

Charles Hause's union filed a grievance to the notice of employment termination with the Spokane County Human Resources Director, Ashley Cameron. After conducting a hearing, Director Cameron denied the grievance. Under Hause's collective bargaining agreement through his union, Hause could have filed an additional grievance, at which time an arbitrator from the State Public Employment Relations Commission would have resolved the dispute. The union elected not to file this second grievance.

#### PROCEDURE

In his initial complaint, Charles Hause asserted three causes of action against Spokane County: discrimination, if not retaliation, in violation of RCW 49.60, Washington Law Against Discrimination (WLAD); a violation of the State Employee Whistleblower Protection Act, RCW 42.40; and wrongful termination in violation of public policy. The first cause of action did not identify the form of discrimination allegedly perpetuated by Spokane County. The complaint did not mention any county action harming a particular race or gender.

In response to a request for production, Charles Hause produced for Spokane County the gaggle of text messages that he had sent to John Schlosser. During a deposition, Hause agreed that he never complained to Spokane County about any adverse action toward any discrete or insular group protected under the Washington Law Against Discrimination.

Following discovery, Charles Hause moved to modify his whistleblower claim to base it on sheriff's office and Spokane County policies and to switch his cause of action for whistleblower protection from the State Employee Whistleblower Protection Act, RCW 42.40, to the Local Government Whistleblower Protection Act, RCW 42.21. Hause also requested to add a cause of action for retaliation when engaging in union practices. The trial court denied Hause's request to assert an independent claim under RCW 42.41, the Local Government Whistleblower Protection Act, but permitted him to assert RCW 42.41 inside his cause of action for wrongful discharge in violation of public policy. Later, Hause sought to amend his complaint again to add a claim under WLAD for disparate treatment discrimination because of his gender. The trial court denied this motion.

Spokane County filed a motion for summary judgment. The superior court granted the motion and dismissed all causes of action.

## LAW AND ANALYSIS

Charles Hause assigns error to the superior court's summary dismissal of his four causes of action. He does not assign error to the superior court's partial denial of his motions to amend his complaint.

We review Charles Hause's appeal in the order of the causes of action discussed in his brief. Because Hause chooses the pronoun "he" for himself, we employ the male pronoun when using indefinite pronouns in our analysis.

We encounter difficulty in addressing the appeal because Charles Hause asserts arguments in his briefs not raised before the superior court. Hause brings related, but distinct, causes of action and various theories under one of his causes of action. Nevertheless, Hause sometimes does not discreetly address the causes of action or theories within one cause. He asks that this court rely on numerous statutes, but then does not analyze how some of the statutes apply to his circumstances.

We review a lower court's grant of summary judgment de novo. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). Summary judgment is appropriate, if, in viewing all facts in the light most favorable to the nonmoving party, no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. *Herron v. Tribune Pub. Co.*, 108 Wn.2d 162, 170, 736 P.2d 249 (1987). Likewise, if a plaintiff fails to establish the existence of an essential element, summary judgment is appropriate. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

### Wrongful Discharge in Violation of Public Policy

We first address the dismissal of Charles Hause’s cause of action for wrongful termination in violation of public policy claim. At the common law, an employer could fire an employee at any moment and for any reason under the “at-will” doctrine.

*Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 935, 913 P.2d 377 (1996).

Nevertheless, because of the power disparity between employer and employee under the at-will regime, most states have created a limited exception to punish employers who discharge employees in contravention of public policy. *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 935-36 (1996). The Washington Supreme Court first recognized such an exception in 1984 in *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 685 P.2d 1081 (1984).

Washington courts analyze causes of action for wrongful discharge in violation of public policy with two distinct analyses. *Martin v. Gonzaga University*, 191 Wn.2d 712, 723-25, 425 P.3d 837 (2018). The first, or original test, based on *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219 (1984) and *Wilmot v. Kaiser Aluminum & Chemical Corp.*, 118 Wn.2d 46, 821 P.2d 18 (1991) identifies four employment actions traditionally characterized as conduct violating public policy and then applies a four-step burden shifting framework. Washington law generally, but not exclusively, limits claims for wrongful discharge in violation of public policy to the four categories:

- (1) when the employer fires an employee for refusing to commit an illegal act;
- (2) when the employer fires the employee for performing a public duty or obligation, such as serving jury duty;
- (3) when the employer terminates the employment of the employee for exercising a legal right or privilege, such as filing workers' compensation claims; and
- (4) when the employer discharges the employee in retaliation for reporting employer misconduct, known as whistle-blowing.

*Martin v. Gonzaga University*, 191 Wn.2d 712, 723 (2018). We label this conventional method as the common categories analysis. If a case does not fit within any of these four categories, the employee may still prevail but then the court must forego the common categories analysis and apply the Perritt test, named after a commentator who published a compendium of wrongful discharge in violation of public policy cases throughout the nation. *Martin v. Gonzaga University*, 191 Wn.2d 712, 723-24 (2018). Conversely, if a claim falls within one of the common categories, the Perritt test must not be applied. *Martin v. Gonzaga University*, 191 Wn.2d 712, 723-25 (2018).

Charles Hause seeks to defeat summary judgment dismissal of his wrongful discharge suit by both the common categories analysis and the Perritt test. Although the two approaches are mutually exclusive, we know of no reason why the employee may not alternatively plead each approach. We focus first on the common categories analysis. We explain and detail the Perritt test when we later explore its possible help to Hause.

*Common Categories Analysis*

The common categories analysis constitutes a four-part framework for an employee making a prima facie case. The first two and the fourth steps impose a burden on the employee. The third fraction, only reached if the employee satisfies elements one and two, demands that the employer produce some evidence.

Under step one of the common categories analysis, an employee must show that his discharge may have been motivated by reasons that contravene a clear mandate of public policy. *Martin v. Gonzaga University*, 191 Wn.2d 712, 723 (2018); *Mackey v. Home Depot USA, Inc.*, 12 Wn. App. 2d 557, 577-78, 459 P.3d 371 (2020). The employee may establish the first prong of a clear mandate of public policy, a question of law, by the letter or purpose of a constitutional, statutory, or regulatory provision. *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 232 (1984); *Mackey v. Home Depot USA, Inc.*, 12 Wn. App. 2d 557, 579 (2020). Alternatively, prior judicial decisions may establish a clear mandate. *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 232 (1984). In *Danny v. Laidlaw Transit Services, Inc.*, 165 Wn.2d 200, 216-17, 193 P.3d 128, (2008), the Washington Supreme court wrote that, while the sources of public policy catalogued in *Thompson* include primary sources of public policy, public policy may come from other sources. Nevertheless, courts proceed cautiously to declare public policy absent prior legislative or judicial expression on the subject. *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 232 (1984).

If a plaintiff satisfies the first prong of a clear public policy, he must produce evidence of a causal link between the public-policy-related conduct and the discharge. *Martin v. Gonzaga University*, 191 Wn.2d 712, 725 (2018). A plaintiff's evidence may be direct or circumstantial. *Mackey v. Home Depot USA, Inc.*, 12 Wn. App. 2d 557, 579 (2020). Once a plaintiff fulfills steps one and two, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employee's discharge. *Mackey v. Home Depot USA, Inc.*, 12 Wn. App. 2d 557, 580 (2020). Importantly, the employer need not persuade the court that the discharge was actually motivated by this reason. *Mackey v. Home Depot, USA, Inc.*, 12 Wn. App. 2d 557, 580 (2020). The burden is only one of production of evidence. *Martin v. Gonzaga University*, 191 Wn.2d 712, 726 (2018). Instead, the employer need only produce evidence which, taken as true, allows the conclusion that a legitimate reason motivated the firing. *Mackey v. Home Depot, USA, Inc.*, 12 Wn. App. 2d 557, 580 (2020). If an employer does so, the burden shifts back to the plaintiff for the final step. We only address the first prong of the common categories analysis because of Hause's failure to present facts implicating a clear mandate of public policy.

Charles Hause asserts that his discharge fits within the second, third, and fourth common categories of wrongful discharge claims. We address the categories in such order.

Charles Hause claims that, in fulfillment of category two, public safety statutes and regulations and sheriff's office policies imposed on him a public duty or obligation to report violence. According to Hause, RCW 7.69.010 decrees that citizens have a civic and moral duty to voluntarily cooperate with law enforcement as witnesses. Hause emphasizes that a public employee bears a heightened duty to comply with the law because RCW 42.20.100 creates a misdemeanor for an official to willfully neglect his duties. He further asserts that the ethics in public service act erects a high standard on a public official to protect all people in Washington. Hause also forwards two Washington Industrial Safety and Health Act (WISHA) regulations, WAC 296-800-120 and WAC 296-800-12005, in support of his contention that the law demanded that he report Trayce Boniecki's conduct. In addition to RCW 7.69.010, RCW 42.20.100, the act, and the two workplace regulations, Hause relies on Spokane County Workplace Violence Policy 650 and Spokane County's Whistleblower Protection Policy 450. We analyze each of the directives forwarded by Hause.

RCW 7.69.010 recognizes a "civic and moral duty . . . of witnesses of crimes to fully and voluntarily cooperate with law enforcement." RCW 7.69.010 constitutes the legislature's statement of intent behind chapter 7.69 RCW, which lists the rights of crime victims, survivors, and witnesses. We question the enforceability of RCW 7.69.010 against someone who refuses to cooperate with law enforcement. The statute refers to a civic and moral duty, not a legal or enforceable obligation as asserted by Charles Hause.

Regardless, Hause does not argue he witnessed a crime. More importantly, he never cooperated with any law enforcement investigation.

Charles Hause references the ethics in public service act, chapter 42.52 RCW. The act applies only to state employees. RCW 42.52.010(1). The act imposes no duties on county employees.

The two WISHA regulations cited by Charles Hause, WAC 296-800-120 and WAC 296-800-12005, require employees to protect the lives and safety of other employees. The first rule reads:

You must play an active role in creating a safe and healthy workplace and comply with all applicable safety and health rules.

**Note:** Employees may discuss and participate in any WISHA safety and health related practice and may refuse to perform dangerous tasks without fear of discrimination. Discrimination includes: Dismissal, demotion, loss of seniority, denial of a promotion, harassment, etc. (see chapter 296-360 WAC, Discrimination) pursuant to RCW 49.17.160 for a complete description of discrimination and the department's responsibility to protect employees.

WAC 296-800-120 (alterations in original). The second regulation declares in part:

Employees must:

- (1) Study and follow all safe practices that apply to their work.
- (2) Coordinate and cooperate with all other employees in the workplace to try to eliminate on-the-job injuries and illnesses.

- ...
- (10) Do everything reasonably necessary to protect the life and safety of employees.

WAC 296-800-12005.

We reject Charles Hause's argument based on WISHA statutes and rules. Hause did not assert the statutes and rules before the superior court. Appellate courts generally will not consider issues raised for the first time on appeal. RAP 2.5(a); *State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). Additionally, WISHA rules do not mention workplace violence.

We also hold that no question of fact arises as to Spokane County's liability based on a clear public policy as a result of employment and workplace policies. In Washington, the right or obligation imposed on the whistleblower, for purposes of common category two, must be established by law, and internal policies do not create law. *Joyce v. State*, 155 Wn.2d 306, 323, 119 P.3d 825 (2005); *Melville v. State*, 115 Wn.2d 34, 39-40, 793 P.2d 952 (1990). Any duty placed on Charles Hause by reason of the Spokane County Personnel Policy Manual or the Spokane County Sheriff's Office's policies are irrelevant to tort liability.

We move to category three of the common categories analysis, which involves exercising a legal right or privilege rather than complying with a public duty. According to Charles Hause, various labor statutes and regulations and Spokane County policies granted him a right to complain about Trayce Boniecki's conduct. Hause argues further that, under *Duncan v. Alaska USA Federa Credit Union, Inc.*, 148 Wn. App. 52, 60, 199 P.3d 991 (2008), the policies constituted promises of specific treatment in specific situations such that his employment contract incorporated the policies.

Charles Hause advances that RCW 49.17.160(1) prohibits retaliation against employers reporting workplace safety and health issues. RCW 49.17.160, a lengthy statute, declares in part:

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to *this chapter*, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by this chapter. Prohibited discrimination includes an action that would deter a reasonable employee from exercising their rights under this chapter.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within 90 days after such violation occurs, file a complaint with the director alleging such discrimination. The department may, at its discretion, extend the time period on recognized equitable principles or due to extenuating circumstances.

(3) Within 90 days of the receipt of the complaint filed under this section, the director shall notify the complainant and the employer of his or her determination under subsections (4) and (5) of this section unless the matter is otherwise resolved. The department may extend the period by providing advance written notice to the complainant and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(4)(a) If the director determines that the provisions of this section have been violated, the director will issue a citation and notice of assessment describing the violation to the employer, ordering all appropriate relief, and may assess a civil penalty.

. . . .

(5) If the director finds there is insufficient evidence to determine that the provisions of this section have been violated, the director will issue a letter of closure and the employee may institute the action on his or her own behalf within 30 days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including

rehiring or reinstatement of the complainant to his or her former position with back pay.

(Emphasis added.) “This chapter” referenced in RCW 49.17.160(1) is chapter 49.17 RCW, the WISHA.

In his appellate brief, Charles Hause asserts protection under RCW 49.17.160(1) but he supplies no analysis as to the applicability of the statute. Hause forwards no facts that he filed a complaint under or related to chapter 49.17 RCW as demanded by RCW 49.17.160(1). Hause does not suggest that the director of the Department of Labor & Industries issued a letter authorizing him to file suit, as required by RCW 49.17.160(5).

Charles Hause cites three Washington Department of Labor & Industries regulations in support of his wrongful discharge claim. According to Hause, WAC 296-800-11010, WAC 296-800-120, and WAC 296-800-12005(10) advance workplace safety and entitle him to assist in achieving work safety without fear of retaliation. WAC 296-800-11010 provides:

You [the employer] must provide and use safety devices, safeguards, and use work practices, methods, processes, and means that are reasonably adequate to make your workplace safe.

....

(4) You must do everything reasonably necessary to protect the life and safety of your employees.

WAC 296-800-120 reads:

You must play an active role in creating a safe and healthy workplace and comply with all applicable safety and health rules.

WAC 296-800-12005(10) declares:

Employees must:

(10) Do everything reasonably necessary to protect the life and safety of employees.

As with RCW 49.17.160, Hause summarily cites the regulations but fails to analyze the three rules. The Director of the Department of Labor & Industries promulgated the three rules pursuant to her authority under chapter 49.17 RCW; thus, we conclude that Hause needed to follow the procedures under the chapter in order to rely on the regulations.

Charles Hause also forwards chapter 41.56 RCW as a basis for Spokane County liability under the third common category. He argues the RCW chapter affords one the right to consult with his union free of interference or retaliation. Although Hause inserts union activity protection under the rubric of the tort of wrongful discharge, he also asserts a free-standing claim for union retaliation. We reserve our analysis under chapter 41.56 RCW for later.

Finally, in support of his quest for redress under the third common category for wrongful discharge, Charles Hause identifies Spokane County Personnel Policy Manual policies 450 and 650. We previously quoted the policies. As already written, employment policies do not grant Hause a legal right or privilege because they are not law. Unlike administrative rules and other formally promulgated agency regulations, internal policies and directives generally do not create law. *Joyce v. State*, 155 Wn.2d

306, 323 (2005); *Melville v. State*, 115 Wn.2d 34, 39-40 (1990). Going further, public policy cannot be clearly established by an employer's internal policies, even if that employer is a county, because the state legislature holds the prerogative of announcing public policy. *Sedlacek v. Hillis*, 145 Wn.2d 379, 390, 36 P.3d 1014 (2001).

Even if internal employer policies constituted law, Charles Hause would need to prove that he complied with the requirements of the policies to gain protections. He never timely reported purported misbehavior or conveyed his complaint to the correct Spokane County official.

Charles Hause contends policies 450 and 650 became enforceable as part of his employment agreement. Hause did not assert this position before the superior court, so we do not entertain the contention on appeal. RAP 2.5(a); *State v. Kirkman*, 159 Wn.2d 918, 926 (2007).

The final common category asserted by Charles Hause is category four, reporting employer misconduct. Hause claims his superiors acted wrongfully, under chapter 42.41 RCW and WISHA rules, by failing to protect employees from workplace violence when declining to report the water bottle throwing to Spokane County's Risk Management department. Chapter 42.41 RCW is the Local Government Whistleblower Protection Act.

In *Keenan v. Allan*, 91 F.3d 1275, 1281 (9th Cir. 1996), the Ninth Circuit observed that chapter 42.41 RCW likely establishes a clear mandate of public policy to encourage

good faith reporting of improper governmental action to the appropriate bodies. Charles Hause did not report conduct constituting improper governmental action, however. Instead, he only reported dissatisfaction with the investigation and appropriate discipline of a coworker. RCW 42.41.020 defines improper governmental action as violation of law or rule, but exempts personnel actions including employee grievances, complaints, suspensions, and demotions from the statute's coverage. In *Dewey v. Tacoma School District No. 10*, 95 Wn. App. 18, 974 P.2d 847 (1999), this court rejected the claim of an employee who expressed dissatisfaction with a supervisor's employee dispute resolution because it did not constitute whistleblowing activity.

*Perritt Test*

We move to the alternate Perritt test. The Perritt test elements substantially mirror those of the common categories analysis. The Perritt test has four factors:

“(1) The plaintiff must prove the existence of a clear public policy (the clarity element); (2) The plaintiffs must prove that discouraging the conduct in which he engaged would jeopardize the public policy (the jeopardy element); (3) The plaintiffs must prove that the public-policy-linked conduct caused the dismissal (the causation element); and (4) The defendant must not be able to offer an overriding justification for the dismissal (the absence of justification element)”.

*Martin v. Gonzaga University*, 191 Wn.2d 712, 723 (2018) (*quoting Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 941 (1996)) (emphasis and citations omitted). The Washington Supreme Court has noted the Perritt test was not intended to substantially

No. 39659-2-III  
*Hause v. Spokane County*

change or replace the common law tort, but supplements it for unique circumstances.

*Martin v. Gonzaga University*, 191 Wn.2d 712, 724 (2018).

Similar to the first prong of a typical prima facie wrongful discharge claim under the common categories analysis, the discernment of a clear mandate of public policy under the first factor of the Perritt test invokes a question of law. *Dicomes v. State*, 113 Wn.2d 612, 617, 782 P.2d 1002 (1989); *Korshund v. Dyncorp Tri-Cities Services, Inc.*, 121 Wn. App. 295, 319, 88 P.3d 1002 (2004), *aff'd* 156 Wn.2d 168, 125 P.3d 119 (2005). Nevertheless, the jeopardy and causation elements are questions of fact. *Ellis v. City of Seattle*, 142 Wn.2d 450, 463, 13 P.3d 1065 (2000). To establish the jeopardy element mentioned in factor two, an employee must prove he engaged in conduct directly related to the public policy or in conduct necessary for its effective enforcement. *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 945 (1996). This requires both that an employee show the inadequacy of alternative means to promote the policy and that the threat of dismissal will discourage others from engaging in conduct society deems desirable. *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 945 (1996). To establish the causation element of factor three, an employee must present sufficient evidence of a nexus between his discharge and alleged public policy violations. *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 179, 876 P.2d 435 (1994). If an employee proves a question of fact as to the jeopardy and causation elements, the burden shifts to the defendant to “show an overriding justification for [the plaintiff’s discharge].” *Korshund*

*v. Dyncorp Tri-Cities Services, Inc.*, 121 Wn. App. 295, 322 (2004) (alteration in original). In adopting the fourth factor, absence of justification, the Washington Supreme Court expressed that, in some instances, weak public policies must yield to the independence of an employer's management of personnel. *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 947 (1996). Therefore, even if an employee's discharge contravenes an existing public policy, courts may still reject it. *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 947 (1996).

Spokane County argues that Charles Hause fails to present facts to support any of the four elements of the Perritt test. Because we conclude that Hause fails to satisfy the clarity element as a matter of law, we do not address the other three parts to the test.

Charles Hause asserts the existence of a clear mandate of public policy to protect reporters of workplace violence from retaliation and another to generally protect government whistleblowers from the same. We do not know why category four of the common categories analysis does not subsume this contention.

Charles Hause claims the public policy of protecting reporters of workplace violence arises from the Washington State and Local Whistleblower Protection Acts, WISHA statutes and regulations, prior judicial opinions, and Spokane County workplace policies. Hause cites unpublished opinion *Ng-A-Qui v Fluke Corp.*, No. 83839-I, slip op. at 5, (Wash. Ct. App. Jan. 17, 2023) to support his contention that WISHA's anti-retaliation provisions establish a clear mandate of public policy to create safety and

health in the workplace. Hause also cites *Karstetter v. King County Corrections Guild*, 193 Wn.2d 672, 687, 444 P.3d 1185 (2019), wherein the court held Washington public employee whistleblower statutes established a clear mandate of public policy to protect whistleblowers who report violations of law. Although he cites no case law, Hause asserts that the finding of a clear mandate of public policy under the State Whistleblower Protection Act extends to RCW 42.41, the Local Whistleblower Protection Act.

Charles Hause cannot establish a clear mandate of public policy. As discussed earlier, Spokane County Personnel Policy Manual policies 450 and 650 do not suffice as law for purposes of wrongful discharge in violation of public policy. Hause cannot use the whistleblower statutes because he is neither a state employee, nor would he qualify for protections because he did not report improper government conduct. WISHA cannot establish the clear mandate of public policy Hause claims it does. Workplace violence does not fall under the rubric of WISHA.

We reject the use of *Ng-A-Quinn v. Fluke Corporation* as establishing a clear public mandate because the decision is unpublished. Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. RAP 14.1(a). *Karstetter v. King County Corrections Guild*, 193 Wn.2d 672 (2019) does not help because it involved a potential violation of law, not internal policy.

Charles Hause relies on RCW 42.41, the Local Government Whistleblower Protection Act. Under RCW 42.41.030:

(1) Every local government employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.

(2) The governing body or chief administrative officer of each local government shall adopt a policy on the appropriate procedures to follow for reporting such information and shall provide information to their employees on the policy. Local governments are encouraged to consult with their employees on the policy.

(3) The policy shall describe the appropriate person or persons within the local government to whom to report information and a list of appropriate person or persons outside the local government to whom to report. The list shall include the county prosecuting attorney.

RCW 42.41.020 defines “improper governmental action” for purposes of RCW 42.41:

(1)(a) “Improper governmental action” means any action by a local government officer or employee:

(i) That is undertaken in the performance of the officer’s or employee’s official duties, whether or not the action is within the scope of the employee’s employment; and

(ii) That is in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

(b) “Improper governmental action” does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the local government collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any action that may be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180.

RCW 42.41.040 creates a process for alleged retaliation resulting from whistleblowing.

(1) It is unlawful for any local government official or employee to take retaliatory action against a local government employee because the

employee provided information in good faith in accordance with the provisions of this chapter that an improper governmental action occurred.

(2) In order to seek relief under this chapter, a local government employee shall provide a written notice of the charge of retaliatory action to the governing body of the local government that:

- (a) Specifies the alleged retaliatory action; and
- (b) Specifies the relief requested.

(3) The charge shall be delivered to the local government no later than thirty days after the occurrence of the alleged retaliatory action. The local government has thirty days to respond to the charge of retaliatory action and request for relief.

(4) Upon receipt of either the response of the local government or after the last day upon which the local government could respond, the local government employee may request a hearing to establish that a retaliatory action occurred and to obtain appropriate relief as defined in this section. The request for a hearing shall be delivered to the local government within fifteen days of delivery of the response from the local government, or within fifteen days of the last day on which the local government could respond.

(5) Within five working days of receipt of the request for hearing, the local government shall apply to the state office of administrative hearings for an adjudicative proceeding before an administrative law judge. Except as otherwise provided in this section, the proceedings shall comply with RCW 34.05.410 through 34.05.598.

RCW 42.41.050 exempts local governments that adopt a similar whistleblower retaliation procedure from the coverage of RCW 42.41:

Any local government that has adopted or adopts a program for reporting alleged improper governmental actions and adjudicating retaliation resulting from such reporting shall be exempt from this chapter if the program meets the intent of this chapter.

Under RCW 42.41, local employees are entitled only to administrative remedies, subject to judicial review thereafter. RCW 42.41.40; *Woodbury v. City of Seattle*, 172

Wn. App. 747, 752-53, 292 P.3d 134 (2013). Moreover, local governments that adopt reporting programs for improper governmental action and establish adjudication procedures for retaliation are exempted from chapter 42.41 RCW if those programs meet the intent of the chapter. RCW 42.41.050. Spokane County’s internal policies mirrored the remedies under chapter 42.41 RCW.

Neither the letter nor the spirit of Local Employee Whistleblower Protection Act apply to Charles Hause’s circumstances. Hause’s workplace violence complaint did not fall within “improper governmental action” as defined in RCW 42.41.020(1). Hause’s complaints concerned his supervisor’s actions or inactions that formed personnel actions. Hause failed to follow reporting procedures under both the act and Spokane County internal policies. He delayed six months in reporting the incident after the sheriff’s department handled the incident.

#### Washington Law Against Discrimination

RCW 49.60.030, a portion of the Washington Law Against Discrimination, recognizes an employee’s “right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.” RCW 49.60.210 governs WLAD retaliation claims. The statute declares:

(1) It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.

(2) It is an unfair practice for a government agency or government manager or supervisor to retaliate against a whistleblower as defined in chapter 42.40 RCW.

To establish a prima facie case of retaliatory discharge under the statute, an employee must show he engaged in a statutorily protected opposition activity; his employer subjected him to an adverse employment action; and a causal connection lies between the opposition and the discharge. *Allison v. Housing Authority of City of Seattle*, 59 Wn. App. 624, 626-27, 799 P.2d 1195 (1990), *aff'd* 118 Wn.2d 79, 821 P.2d 34 (1991). If the employee fails to satisfy the first element, the claim fails because the statute only protects opposition directed toward practices forbidden by chapter 49.60 RCW. *Coville v. Cobarc Services, Inc.*, 73 Wn. App. 433, 440, 869 P.2d 1103 (1994).

Washington State has liberal pleading rules that only demand that the plaintiff give the court and opponent notice of the general nature of the claim asserted. *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P.2d 425 (1986). Nevertheless, a pleading may be insufficient if it does not give the opposing party fair notice of the identity of the claim and the ground on which the claim rests. *Dewey v. Tacoma School District No. 10*, 95 Wn. App. 18, 23 (1999). A party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into briefs and contending it

was in the case all along. *Molloy v. City of Bellevue*, 71 Wn. App. 382, 385-86, 859 P.2d 613 (1993).

In both his original and amended complaints, Charles Hause alleged Spokane County retaliated against him for reporting wrongdoing. In his response to the summary judgment motion, however, and now on appeal, Hause asserts he experienced disparate treatment because he was male. Nevertheless, retaliation and discrimination are different causes of action governed by separate provisions of chapter 49.60 RCW. Hause cannot now rely on a straight discrimination claim.

Charles Hause does not present a prima facie showing of retaliation under RCW 49.60.210 because he did not engage in opposition activity. During a deposition, Hause stated he had never complained about any discrimination based on any of the categories protected by RCW 49.60.030. Similarly, his lawsuit complaint made no mention of any protected rights or groups. Instead, Hause complained of workplace violence.

On appeal, Charles Hause claims his complaint caused him to be subjected to discrimination because he is male. To get protections under RCW 49.60.210, however, his workplace violence complaint must have been in opposition to disparate treatment, not the impetus for the disparate treatment.

#### Union Activity

Charles Hause assigns error to the trial court's grant of summary judgment on his RCW 41.56.140 claim either as a separate cause of action or under the umbrella of

wrongful discharge in violation of public policy. Hause contends (1) he established a prima facie showing that he was engaged in collective bargaining at the time of his termination, and (2) Spokane County interfered with the protections granted to him by chapter 41.56 RCW.

RCW 41.56.040 declares:

No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

RCW 41.56.140 provides:

It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To control, dominate, or interfere with a bargaining representative;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining with the certified exclusive bargaining representative.

Under RCW 41.56.140(1), an employer commits interference if it engages in conduct which can reasonably be perceived by employees as a threat of reprisal or a promise of benefit deterring them from pursuit of lawful union activity. *Clallam County v Washington State Public Employment Relations Commission*, 43 Wn. App. 589, 599-600, 719 P.2d 140 (1986). Similarly, an employer can also violate RCW 41.56.140(1) if

it discharges an employee for engaging in the protected legal right of pursuing a grievance. *Clallam County v Public Employment Commission*, 43 Wn. App. 589, 599-600 (1986). If a plaintiff asserts this type of claim, he must prove he filed a grievance and his pursuit of it motivated the employer in discharging him. *Clallam County v. State Public Employment Relations Commission*, 43 Wn. App. 589, 599-600 (1986).

Charles Hause asserts that Spokane County violated RCW 41.56.040 and .140 by interfering with the exercise of his collective bargaining rights and retaliating against him for exercising those rights. Hause emphasizes that he filed his workplace violence complaint on the advice, and direction, of his union representative, Gordon Smith. He characterizes Smith's advice as union activity to protect union members and their workplace safety. According to Hause, his filing of the workplace violence complaint constituted the beginning of the grievance process protected by his collective bargaining agreement.

No statute or caselaw supports the argument that the workplace violence complaint started the grievance process. The argument contradicts the facts that Hause neither filed a grievance before the alleged retaliation nor had any action to grieve under his collective bargaining agreement before employment termination.

Charles Hause cites *Clallam County v. Public Employment Relations Commission*, 43 Wn. App 589 (1986). In *Clallam County*, this court reversed the trial court and reinstated an administrative determination that an employee was fired for engaging in

protected conduct. The court ruled that a verbal complaint raised by employee Baker constituted a grievance under his collective bargaining agreement because the agreement allowed for a verbal complaint. The court reasoned that, because chapter 41.56 RCW requires the implementation of a grievance process, the pursuit of the grievance constituted a protected right.

*Clallam County* does not control Charles Hause's appeal. Hause presents no evidence that his collective bargaining agreement expressly allowed for verbal grievances. Just as important, Hause filed his formal written grievance only after his employment termination. Spokane County policy, not the collective bargaining agreement, governed Hause's workplace violence complaint. The employment policy is unrelated to union rights and applies to all county employees regardless of union representation.

Charles Hause is not appealing a trial court's revision of an administrative decision. Unlike the employee in *Clallam County*, Hause brought this suit independently after retracting his grievance.

Charles Hause claims that his union representative helped him to complete the workplace violence complaint. In his briefing, however, he does not explain how Spokane County interfered in the representative's assistance with the complaint, let alone interfered in any other union assistance or activity.

CONCLUSION


We affirm the summary judgment dismissal of all of Charles Hause's causes of action.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
Fearing, J.

WE CONCUR:

  
Lawrence-Berrey, C.J.

  
Pennell, J.

## **APPENDIX “B”**

# DOSH DIRECTIVE

Department of Labor and Industries  
Division of Occupational Safety and Health  
*Keeping Washington safe and working*

## 5.05

## Violence in the Workplace

**(Updated) Date: November 5, 2010**

### I. Purpose

This directive provides guidance to DOSH staff on the appropriate application of WISHA standards in workplaces where there is an increased risk of violent incidents.

### II. Scope and Application

This directive applies to all DOSH operations statewide. It replaces all previous instructions on this issue, whether formal or informal.

### III. References

- Chapter 296-832 WAC, Late Night Retail Worker Crime Prevention
- DOSH Compliance Manual
- NIOSH Occupational Violence web resources <http://www.cdc.gov/niosh/topics/violence/>

### IV. Background

- A. Violence in the workplace is a major contributor to occupational fatalities and injuries. From 2000 to 2005, an average of 6 Washington workers died each year as a result of workplace homicide, and from 2000-2005 there was an annual average of 2,094 industrial insurance claims for assault and violence-related incidents. Recent years have shown some reduction in the number and rates of violence-related injuries, but homicide remains the fifth highest cause of workplace fatalities in Washington State. Washington's unique Late Night Retail Worker Crime Prevention standard appears to have prompted a reduction in violent crimes within its scope, but that scope is limited to a select group of retail businesses.
- B. Although there is a degree of uncertainty, workplace violence is not entirely random and unpredictable. In fact, there are clear patterns. Research has repeatedly identified factors associated with incidents of workplace homicide or

assault. Based on its analysis of the various research, the National Institute for Occupational Safety and Health (NIOSH) has suggested that the following factors, when placed in combination with other conditions, *may* require attention (whether these factors in fact suggest a level of workplace exposure to violence that requires employer intervention depends upon a combination of circumstances specific to the individual employer or worksite:

*[from NIOSH Current Intelligence Bulletin 57, July 1996]:*

- Contact with public
- Exchange of money
- Delivery of passengers, goods, or services
- Having a mobile workplace such as a taxicab or police cruiser
- Working with unstable or volatile persons in health care, social services, or criminal justice settings
- Working alone (working in isolation) or in very small numbers
- Working late at night or early morning hours
- Working in high-crime areas
- Guarding valuable property or possessions
- Working in community-based settings

## V. Enforcement Policies

### A. **Standards that Address Hazards.**

Several existing provisions of the Washington Administrative Code (WAC) may apply to the hazards of violence in the workplace, including (but not necessarily limited to) the following:

- Chapter 296-832 WAC, Late Night Retail Workers Crime Prevention, provides direction to retail businesses that operate between 11:00 p.m. and 6:00 a.m. Restaurants, hotels, taverns and lodging facilities are beyond the scope of this rule.
- RCWs 49.19 and 72.23 require certain healthcare settings and state institutions to develop violence prevention programs.
- WAC 296-800-14005 requires employers to "Develop a formal accident prevention program (APP) that is outlined in writing. The program must be tailored to the needs of the workplace or operation and to the types of hazards involved." The program must include "a safety orientation program" that contains (among other things) information about reporting injuries and unsafe conditions, the use and care of personal protective equipment, and emergency procedures.
- WAC 296-800-14025 requires employers to "Establish, supervise, and enforce your accident prevention program in a manner that is effective in practice."

- WAC 296-800-11005 requires employers to "Provide your employees a workplace free from recognized hazards that are causing, or are likely to cause, serious injury or death." WAC 296-800-11010 requires employers to "Provide and use safety devices, safeguards, and use work practices, methods, processes, and means that are reasonably adequate to make your workplace safe" and to "do every other thing reasonably necessary to protect the life and safety of your employees."
- WAC 296-800-11035 requires employers to "Establish, supervise and enforce rules that lead to a safe and healthy work environment that are effective in practice."
- WAC 296-800-16005 requires employers to "Look for and identify hazards or potential hazards in your workplace and determine if PPE is necessary on the job."

**B. Evaluating Complaints.**

Each DOSH Enforcement Supervisor must evaluate any complaints alleging a workplace violence or security hazard according to the applicable guidance regarding evaluating complaints or referrals, in the DOSH Compliance Manual.

**C. Workplace Fatality.**

In the event of a workplace fatality resulting from violence, the supervisor must assign a Compliance Safety and Health Officer (CSHO) with experience appropriate to the situation. The CSHO must take special care not to interfere with any law enforcement activities. He or she must limit the investigation to the questions of whether the employer complied with applicable WISHA requirements, and whether any violation of such requirements contributed to the incident.

**D. Inspecting Late Night Retail Employers**

CSHO's must evaluate compliance with Chapter 296-832 WAC, when inspecting late-night retail employers subject to those requirements, and issue citations as appropriate under the standard. If the requirements of the late-night retail standard are met by employers subject to the standard, CSHOs must not use the APP standard to impose more stringent requirements to address the same hazards.

**E. Conducting Inspections.**

In evaluating an employer's compliance with existing obligations under the Accident Prevention Program standard (WAC 296-800-14005) as they relate to workplace violence, CSHOs must follow these inspection procedures:

1. The CSHO must be alert to the presence of factors that **may** be associated with an increased risk of workplace violence, especially when inspecting an employer within an industry with a high rate of workplace violence injuries or

fatalities. The presence of one or more such factors, including those acknowledged by NIOSH (see background section, above) may not be significant in itself. The CSHO must consider the overall environment to determine whether the potential hazards pose a credible threat of physical injury.

2. When reviewing injury records and conducting interviews of employers, employees and their representatives, the CSHO must be alert to patterns of workplace violence incidents.
3. The CSHO also must review the employer's written Accident Prevention Program (APP) to determine whether it addresses any hazards identified by the CSHO.
  - a. If the APP does not address such hazards, then the CSHO must evaluate whether the employer was, or clearly should have been, aware of the hazard. If so, the CSHO must issue the appropriate violation under WAC 296-800-14005, or the equivalent vertical standard. If not, the CSHO must provide an appropriate advisory "message" on the citation and notice giving the employer the necessary guidance, rather than issuing a "violation" under WISHA.
  - b. If the APP addresses such hazards but is clearly insufficient, the CSHO must issue the appropriate violation under WAC 296-800-14005, or the equivalent vertical standard. Use of such a test does not allow the CSHO merely to substitute his or her judgment for the employer's with regard to either the extent of the hazard or the method of abatement; rather, considerable deference must be paid to the employer's analysis of the hazard and its appropriate abatement.
  - c. If the employer effectively addresses such hazards in employee handbooks or other written materials (and if the guidance found in the handbooks or other materials has actually been put into effect by the employer) other than the APP, any APP violation must be treated as de minimus and therefore not cited.
  - d. If the APP sufficiently addresses existing workplace violence hazards but is not enforced, the CSHO may issue a violation of WAC 296-800-14025 as appropriate.

**F. Applying the “Safe Place” Standard.**

Safe place citations under WAC 296-800-11005 (or the equivalent requirement in a vertical standard) must be issued only if no specific standard applies and are subject to the guidance regarding safe place provisions, in the DOSH Compliance Manual. This detailed guidance describes the appropriate approach in determining the presence of the following four elements of any safe place citation:

1. The employer must have failed to keep the workplace free of a hazard to which employees of that employer were exposed
2. The hazard must be recognized by the employer, by the industry, or by “common sense”
3. The hazard must be causing or likely to cause death or serious physical harm
4. There was a feasible and useful method to correct the hazard.

**G. Management Responsibility.**

When staff encounters situations related to employee-on-employee violence, or other situations involving a specific situation where the employer may have failed to provide sufficient protection, staff must take care not to base their conclusions solely on the fact that an incident occurred. A citation of WAC 296-800-11035 in such circumstances may be issued only if the department concludes that the employer clearly failed to respond in a reasonable manner based on what the employer knew or clearly should have known at the time of the incident.

**H. Personal Protective Equipment (PPE).**

If personal protective equipment (PPE) would be an appropriate response to any identified hazards, the CSHO must determine whether the employer performed an analysis of hazards that might necessitate the use of PPE, as required by the PPE standard (WAC 296-800-16005). If the hazard is recognized and no such analysis has been performed, the CSHO must issue the appropriate citation under WAC 296-800-16005.

If the employer has performed the required analysis, the CSHO must determine whether the decisions resulting from the analysis were reasonable. Use of such a test does not allow the CSHO merely to substitute his or her judgment for the employer's with regard to the hazard and its appropriate abatement).

**I. Voluntary L&I Guidelines.**

Voluntary workplace violence guidelines issued by L&I may not be used as a basis for a citation, nor may such guidelines be used to demonstrate an employer's knowledge of a hazard for enforcement purposes.

**J. Coding in the WIN System.**

All inspections where workplace violence issues are reviewed, whether cited or not, must be coded "Workplace Violence" in the Special Tracking Information box, located on the WIN Inspection screen. All consultations where workplace violence issues were reviewed must be coded "Workplace Violence" in the Emphasis Information box on the WIN Consultation Visit screen.

Approved:

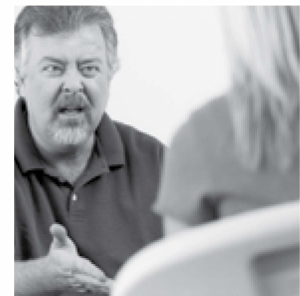
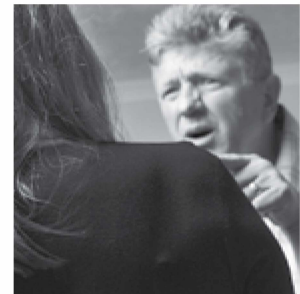
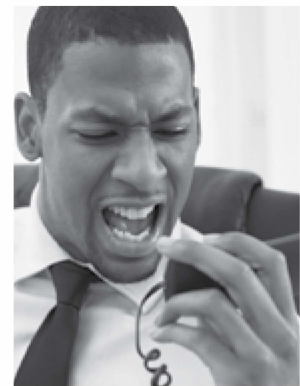


Michael Silverstein, MD., Assistant Director  
Division of Occupational Safety and Health  
Department of Labor and Industries

## **APPENDIX “C”**

# Workplace Violence

*Awareness and Prevention for  
Employers and Employees*



Division of Occupational Safety and Health



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Washington State Department of  
**Labor & Industries**

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# **Workplace Violence**

*Awareness and Prevention for  
Employers and Employees*

Prepared by the Washington State  
Department of Labor & Industries  
Division of Occupational Safety and Health

## Notice

This guidebook is meant to help employers and employees recognize workplace violence, minimize and prevent it, and respond appropriately if it occurs. Included in this guidebook is a sample workplace violence prevention program that employers can adapt to their company's size and type. The sample program can be incorporated into a company's accident prevention program, used to create a separate workplace violence prevention program, or included as part of an employee handbook.

# Contents

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<b>Overview .....</b>	<b>1</b>
<b>Cost of Workplace Violence .....</b>	<b>2</b>
<b>High-risk Industries .....</b>	<b>3</b>
<b>Types of Workplace Violence and Their Characteristics .....</b>	<b>4</b>
<b>Violent Incidents:.....</b>	<b>6</b>
<b>Elements of a Workplace Violence Prevention Program .....</b>	<b>12</b>
<b>Appendices .....</b>	<b>16</b>
Appendix A: Sample Workplace Violence Prevention Program .....	A:1
Appendix B: Sample Forms.....	B:1
Appendix C: Sample Training Techniques .....	C:1
Appendix D: Sample Policy on Domestic Violence in the Workplace.....	D:5
Appendix E: Selected Laws and Regulations .....	E:8
Appendix F: Other Resources on Workplace Violence...	F:13
Appendix G: Technical Assistance and Training .....	G:14

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# Overview

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Workplace violence can happen anywhere at any time. It can involve a single victim, such as the apartment manager stabbed to death in Everett in July 2010. It can involve multiple victims, as in the shooting at the Jewish Federation of Greater Seattle, when a gunman shot six workers, killing one, in July 2006.

News media accounts of these shootings, assaults, and other acts of violence at the workplace have heightened awareness of this problem.

Workers in some industries, such as health care or retail establishments, are more likely than others to experience violence on the job. For that reason, Washington State has laws that require workplace violence prevention programs in health care settings, psychiatric hospitals and late night retail establishments, like convenience stores.

You can find out more about these safety rules for workers in these industries in Appendix E.

Regardless of whether your worksite falls within these rules, however, every business should consider establishing a workplace violence prevention plan.

Such a plan does not have to be complicated, time consuming or expensive. Ask yourself, “What kind of workplace violence could happen at my work?” Then use this guide and the tips included to plan ways to reduce the possibility of violence at work.

Workplace violence causes a significant number of fatalities and injuries in Washington and throughout the United States. The Bureau of Labor Statistics’ Census of Fatal Occupational Injuries (CFOI) reports that homicides due to workplace violence are the fourth-leading cause of work-related deaths. For women, violence is the second leading cause of workplace fatalities in the United States.

Bureau of Labor Statistics (BLS) data for 2009 showed violence as the second-leading cause of workplace deaths in Washington State. Transportation accidents, being “struck by” equipment or objects and falls accounted for most other workplace fatalities. In addition, in 2009 Washington State experienced its highest number of workplace violence-related deaths in more than a decade. Of 62 work-related fatalities, 13 were on-the-job homicides and seven were suicides.

Nationally, non-fatal acts of violence in the workplace are numerous. In 2009, approximately 572,000 non-fatal violent crimes (rape/sexual assault, robbery, and aggravated and simple assault) occurred against workers, according to data from the National Crime Victimization Survey.

Violence is the  
second leading cause  
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for women in the  
United States

There is a strong association between violence in the home or community, and violence in the workplace. For example, BLS data from 1997–2009 show that 381 women killed in the workplace were murdered by a husband, male partner, or other relative or acquaintance.

Employers can take steps to make the workplace safer. It is critical that business, labor, social and health services, education, law enforcement and government undertake a collaborative approach to prevention.

## Cost of Workplace Violence

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Shootings, assaults, and other incidents of workplace violence routinely make the news. Recent media coverage has included a 39-year-old King County taxi driver on the way to pick up a passenger who was shot in the head; a 55-year-old self-employed tool salesman who was robbed and murdered in Pierce County en-route to a delivery; a 35-year-old business owner shot and killed by her estranged husband in her Clallam County office; and a 44-year-old middle school teacher in Benton County returning a video to school late in the evening assaulted in the hallway of the school.

Workplace violence is any verbal assault, threatening behavior, or physical assault occurring in or arising from the worksite.

Workplace violence injures and kills real people and affects victims' families, friends and co-workers. While the human costs of workplace violence cannot be calculated, many of the financial impacts can be estimated. For non-fatal injuries related to assaults and violence, the BLS estimates there are an annual average of nearly 800 lost workday assault-related injuries in Washington State. Here are a few other striking facts:

- Workers' compensation data for both the State fund and self-insured employers show an average of more than 2,000 claims related to assaults and violence each year, an amount equal to 12 such claims per 10,000 full time workers.
- The National Safe Workplace Institute estimates that costs to employers in missed days of work and legal expenses exceed \$4 billion annually.
- Employers also may incur replacement and/or retraining costs; lost production costs; administrative costs and potential litigation costs. Such "indirect" costs are highly variable, but are commonly suggested to be 1.5 to 2 times the direct costs of medical treatment, wage-replacement and disability pensions.

# High-risk Industries

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A review of workplace violence data reveals that some types of violence are not random, but for the most part occur predictably in certain types of workplaces or occupations. Violence prevention efforts are especially important for these “high risk” industries and occupations.

In Washington State, the industries at highest risk of workplace violence include:

- Health care
- Social services
- Security services
- Public administration
- Education
- Law enforcement
- Retail trade
- Public transportation
- Accommodation and food services

These industries are similar to those identified as high risk in the national data.

By law, all employers in Washington State must provide a workplace free from recognized hazards. At any worksite where workplace violence is determined to be a hazard, a workplace violence prevention plan would be required.

But incidents of workplace violence can happen anywhere. For this reason, all employers should take steps to prevent or reduce the risk of workplace violence.

# Types of Workplace Violence and Their Characteristics

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Workplace violence takes several forms, including verbal threats, threatening behavior or physical assaults. It can be classified as to “type” depending on the relationship of the assailant to the worker or the workplace. Their specific characteristics are described below.



## Type 1: Violence by Strangers

This is violence committed by an assailant who has no legitimate business relationship to the workplace or the worker. For example, the person enters the workplace to commit a robbery or other criminal act. In Washington State, violence by strangers accounts for most of the fatalities related to workplace violence. Workplaces at risk of violence by strangers commonly include late night retail establishments and taxi cabs.

## Type 2: Violence by Customers or Clients

This is violence committed by an assailant who either receives services from or is under the custodial supervision of the affected workplace or the victim. Assailants can be current or former customers or clients such as passengers, patients, students, inmates, criminal suspects or prisoners. The workers typically provide direct services to the public, for example, municipal bus or railway drivers, health care and social service providers, teachers and sales personnel. Law enforcement personnel are also at risk of assault from individuals over whom they exert custodial supervision. Violence by customers or clients may occur on a daily basis in certain industries; they represent the majority of non-fatal injuries related to workplace violence in Washington State.





### **Type 3: Violence by Co-workers**

This involves violence by an assailant who has some employment-related involvement with the workplace, for example, a current or former employee, supervisor or manager. Any workplace can be at risk of violence by a co-worker. In committing a threat or assault, the individual may be seeking revenge for what is perceived as unfair treatment.

Fatalities related to violence by co-workers have received much media attention, but account for only a small proportion of all workplace violence related fatalities. Strangers cause most workplace violence fatalities.



### **Type 4: Violence by Personal Relations**

This includes incidents of domestic violence at the workplace by an assailant who confronts an individual with whom he or she has or had a personal relationship outside of work. Personal relations include a current or former spouse, lover, relative, friend or acquaintance. The assailant's actions are motivated by perceived difficulties in the relationship or by psycho-social factors that are specific to the assailant.

# Violent Incidents:

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## Case Scenarios, Potential Risk Factors and Potential Prevention Measures

The types of violence identified in the previous section illustrate different characteristics of workplace violence and the ways violence may present itself. The significance of these four types is that each involves somewhat different risk factors and means of preventing or responding to the potential violent incident.

“A risk factor is a condition or circumstance that may increase the likelihood of violence...”

A risk factor is a condition or circumstance that may increase the likelihood of violence occurring in a particular setting. For instance, handling money in a retail service makes that workplace a more likely target for robbery, the most common kind of violence by strangers in the workplace. An attorney’s office, where all payments are received by check and money is not directly handled, would not present the same kind of target and would not be at the same degree of risk of violence due to the handling of money.

Different risk factors might predominate in the attorney’s office. An attorney might be working in the office late at night after business hours. He or she might be subject to violence from a customer or client who is dissatisfied with the outcome of litigation. In this example, several risk factors are combined, increasing the overall risk to the attorney.

Each risk factor only represents a potential for an increased likelihood of violence. No risk factor, or combination of risk factors, guarantees that violence will occur or that its incidence will increase. However, the presence of these risk factors, particularly of several in combination, increases the likelihood that violence will occur.

The following general factors, which may have the potential to increase an employee’s risk for workplace violence, have been identified in various studies.

General risk factors include:

- Contact with the public.
- Exchange of money.
- Delivery of passengers, goods, or services.
- Having a mobile workplace such as a taxicab or police cruiser.
- Working with unstable or volatile persons in health care, social services, or criminal justice settings.
- Working in isolation.
- Working late at night or during early morning hours.
- Working in high-crime areas.
- Guarding valuable property or possessions.
- Working in community-based settings.

Some risk factors are more likely to pertain to one or more of the four types of violence in the workplace. The following case scenarios illustrate the four types of violence. Potential risk factors for each case (you may be able to identify others), and examples of potential prevention measures pertaining to those risk factors are listed. Keep in mind that specific prevention techniques will vary according to circumstances and resources available.

The case scenarios are designed to help you think about your company's potential risk factors. It is up to you to think through those that might affect you and your personnel. From there, you can determine how best to mitigate those risks using prevention measures designed to work within your resources and in your unique workplace.

## Case Scenario **Violence by Strangers (Type 1)**

It's 1 a.m. and a man enters a grocery store. He goes to a cooler, gets a six-pack of beer and heads to the checkout stand. When the clerk rings up the sale, the man pulls out a gun and tells the clerk to open the till. As the robber starts grabbing the cash from the till, a customer enters the store. The frightened clerk sees this as an opportunity to thwart the robbery, and shoves the cash register drawer onto the robber's hand. The surprised robber fires his gun repeatedly, hitting both the clerk and the customer before fleeing the store.



### **Potential Risk Factors**

- Working with money
- Working alone
- Working late at night
- Isolated worksite
- Poor visibility into worksite
- Poor lighting outside of worksite
- High crime area

### **Potential Prevention Measures**

To identify the prevention measures needed in your organization, first conduct a hazard assessment. A comprehensive workplace violence program could include measures such as the following:

- Training (include de-escalation techniques appropriate to your industry)
- Post signs stating cash register only contains minimal cash
- Leave a clear, unobstructed view of cash register from street
- Have a drop safe, limited access safe or comparable device
- Address adequate outside lighting
- Examine and address employee isolation factors
- Provide security personnel
- Communication method to alert police/security
- Increase police patrol in the area
- Post laws against assault, stalking or other violent acts

## Case Scenario **Violence by Customers or Clients (Type 2)**

Mary is a social worker in a child welfare office. Her office space is a cubicle with one entry. One night, Mary was working late after most of her co-workers had left. The mother of one of her clients walked into her cubicle unannounced. She was quite emotional, and had a history of being verbally assaultive and threatening. Mary asked her to leave and make an appointment to see her the next day. The mother said she wanted her child back immediately and picked up a pair of scissors on Mary's desk. Mary asked for the scissors back, and when the mother refused, Mary picked up the phone to dial security. While Mary was calling security, the mother stabbed Mary's hand and ripped the phone out of the socket.

### **Potential Risk Factors**

- Working in isolation
- Working after regular work hours
- Lack of controlled access to worksite
- Dealing with customers with past violent behavior
- Potential weapons\* (such as scissors) easily visible and accessible
- Lack of a quick communication mechanism to security personnel
- Lack of alternate escape route



### **Potential Prevention Measures**

To identify the prevention measures needed in your organization, first conduct a hazard assessment. A comprehensive workplace violence program could include measures such as the following:

- Training (including de-escalation techniques appropriate to your industry)
- Control access to worksite (e.g., posted restricted access, locked doors)
- Examine and address employee isolation factors
- Quick communication method to alert security
- Eliminate easy access to potential weapons
- Client referral/assistance programs
- Set up worksite so employees are not trapped from exiting
- Provide security personnel
- Post laws against assault, stalking or other violent acts

\*A weapon is any physical object that can be used to inflict injury or cause death

## Case Scenario **Violence by Co-Workers (Type 3)**

Bob supervises 14 workers at a small warehouse operated by Company X. The warehouse may be making layoffs soon; all the workers, including Bob, are concerned about their jobs. Company X management says it will make a decision within six months, but also says that productivity will have to increase substantially to keep the warehouse open. Bob starts disciplining workers he thinks are not working productively. When he meets with one worker, Doug, and informs him that he will be disciplined for poor work performance, Doug becomes angry and starts to shout at Bob. A week later, Bob suspends Doug for a week for continuing aggressive, threatening behavior. At that point, Doug pushes Bob away from him and the two men get into a fistfight.



### **Potential Risk Factors**

- High stress in the workplace (impending layoffs, for example) and outside, non-work related stress
- Lack of appropriate management protocols for disciplinary actions
- Individual with a history of violent behavior
- Lack of appropriate training for supervisors

### **Potential Prevention Measures**

To identify the prevention measures needed in your organization, first conduct a hazard assessment. A comprehensive workplace violence program could include measures such as the following:

- Training (including de-escalation techniques appropriate to your industry)
- Enforced policy on no tolerance for workplace violence
- Management strategy for layoffs
- Management policy for disciplinary actions
- Access to employee assistance program or other counseling services
- Policy prohibiting weapons
- Provide security personnel
- Post laws against assault, stalking or other violent acts

## Case Scenario **Violence by Personal Relations (Type 4)**

Sue, a secretary at the local high school, went through a difficult divorce last year. Her ex-husband, Tod, did not want the divorce. Tod has called Sue regularly asking to reconcile and he has begun coming by her office to leave messages and gifts. Sue has asked him not to call or come by the school. One of her co-workers suggested that she seek a restraining order against Tod, but Sue felt she could handle it on her own. Finally, Tod leaves Sue a message that he doesn't want to live unless he can reconcile with her. Sue calls him back and urges him to see a therapist but refuses to meet or talk with him. On the anniversary of their divorce, Tod goes to the high school and waits for Sue in the lobby. When Sue approaches the lobby, he rushes toward her with a gun, shoots her, then shoots himself.



### **Potential Risk Factors**

- Individual with history of violent/threatening behavior
- Lack of controlled access to the worksite
- No communication policy regarding restraining orders
- Domestic violence

### **Potential Prevention Measures**

To identify the prevention measures needed in your organization, first conduct a hazard assessment. A comprehensive workplace violence program could include measures such as the following:

- Domestic violence training (including de-escalation techniques)
- Enforced policies on handling/preventing violence situations
- Restraining orders
- Control access to worksite
- Access to consultation with employer, employee assistance program or other counseling program
- Enforced policy prohibiting weapons
- Reporting procedures
- Relocating within worksite where possible
- Necessary staff notification
- Provide security personnel
- Post laws against assault, stalking or other violent acts

# Elements of a Workplace Violence Prevention Program

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**Case Scenario** As noted by many professionals working on the workplace violence issue, violent acts generally occur in predictable types of worksites or settings, are associated with identifiable risk factors, and may be eliminated or controlled through effective prevention strategies. (See Appendix A for a sample workplace violence prevention program.) Programs to prevent workplace violence, just like other workplace hazard prevention programs, often include the following key elements:

**Management Commitment and Employee Involvement** To ensure an effective program, managers and employees should work together, perhaps through a team approach, to provide the motivation, commitment of resources, and feedback to address workplace violence issues.

**Hazard Assessment** Hazard assessment involves a step-by-step, common sense look at the workplace to find existing or potential hazards for workplace violence. This can include:

- Analyzing and tracking records of violence at work.
- Examining specific violence incidents carefully.
- Surveying employees to gather their ideas and input.
- Periodic inspections of the worksite to identify risk factors that could contribute to injuries related to violence.

The hazard assessment should examine vulnerability to the four categories of violence previously described — violence by strangers, violence by customers or clients, violence by co-workers, and violence by personal relations.

**Hazard Prevention And Control** Once existing or potential hazards are identified through the hazard assessment, then hazard prevention and control measures can be identified and implemented.

- These measures may include (in order of general preference):
- Engineering controls, such as locks and alarms.
- Administrative/work practice controls, such as sign-in procedures for visitors and employee assistance programs.
- Personal protective equipment, such as bullet-proof vests for police and security personnel.
- Posting applicable laws, such as those prohibiting assaults and stalking, in visible locations may serve as a prevention measure.

Training And Instruction	Training and instruction on workplace violence ensures that all staff are aware of potential hazards and how to protect themselves and their co-workers through established prevention and control measures.
Reporting Procedure	A reporting procedure for violent incidents should be developed for all types of violent incidents, whether or not physical injury has occurred. Violence other than physical injury would include, for example, verbal abuse or threats of violence. This procedure should be in writing and should be easily understood by all employees. It should take into account issues of confidentiality. Employees may be reluctant to come forward otherwise and they should not fear reprisal for bringing their concerns to management's attention.
Record Keeping	Record keeping is essential to the success of a workplace violence prevention program. Good records help employers determine the severity of the problem, evaluate methods of hazard control, and identify training needs.
Evaluation	As part of an overall program covering workplace violence, employers should evaluate their safety and security measures. Management should share the evaluation results with all employees. Any changes in the program should be discussed at regular meetings of the safety committee, with union representatives or other employee groups.

## Responding If An Assault Occurs

Employers should prepare a plan that outlines the steps to take if an assault occurs. What are the priorities?

Immediately after an assault occurs, an employer should focus first on the medical and psychological needs of affected employees.

Other immediate steps include:

1. Call the police and help them in their work, for example by providing access to the crime scene for their investigation, assisting them in locating witnesses, victims and others to interview.
2. Secure work areas where disturbances occurred.
3. As soon as possible, account for all your workers and others in the area and make sure they are safe.
4. Provide for site security and ensure that no work area is left short-staffed while others assist the victim or help in securing the area.
5. Quickly assess the work area if it was disturbed or damaged during an incident and determine if it is safe.
6. Talk to victims, witnesses, and other affected employees in confidence. Allow them to express their feelings and encourage them to seek treatment if appropriate.
7. Provide accurate communication to outside agencies, media and law enforcement.

Additional attention to employees' medical and psychological needs may be necessary. Employees may need the services of an employee assistance program or other counseling services. Provisions for follow-up after medical and psychological treatment, medical confidentiality, and protection from discrimination must be addressed to prevent the victims of workplace violence from suffering further loss.

## Investigation and Evaluation

After an incident occurs, a detailed investigation by the company safety and health committee or the employer is imperative. All incidents, including near misses, should be investigated as soon as possible. A delay of any kind may cause important evidence to be removed or destroyed intentionally or unintentionally.

### Important Records to Keep

- Log of injuries and illnesses (OSHA).
- Medical reports of worker injury; reports for each recorded assault.
- Incidents of assault and threats of violence. (See sample forms in Appendix B.)
- Information on high-risk clients with a history of past violence. (Share with employees who need to know.)
- Minutes of safety meetings.
- Records of hazard analyses and corrective actions recommended.
- Records of relevant training conducted, attendees and qualification of trainers.

The investigation should focus on determining the facts of what happened to prevent it from happening again, and not finding fault with anyone. Employers should maintain comprehensive records of the investigation. (See Appendix B, Assault Incident Report Form.)

When conducting the investigation:

- Collect facts on who, what, when, where and how the incident occurred.
- Get statements from witnesses and take photos of the damage or injuries where appropriate.
- Identify contributing causes.
- Recommend corrective action.
- Encourage appropriate follow-up.
- Consider changes in controls, procedures or policies.

After an incident occurs, it is especially important to review the workplace violence prevention program and assess its effectiveness. Identify any deficiencies and correct them.

### Steps in the Evaluation Process

- Create a violence reporting system.
- Regularly review your workplace violence reports and logs. (See Appendix B.)
- Ask your employees for input on safety and security problems. (See Appendix B for sample survey.)
- Track changes in engineering controls and administrative and work practices designed to prevent workplace violence.
- Analyze trends in workplace violence-related injuries relative to “baseline” rates.
- Keep up on the latest strategies to deal with violence.
- Measure improvement based on lowering the frequency and severity of workplace violence.

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# Appendix A:

## Sample Workplace Violence Prevention Program

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*An employer may choose to create a separate workplace violence prevention program or incorporate this information into other company documents: for example, the company's accident prevention program or an employee handbook.*

### **Policy Statement (Effective Date of Program)**

Our establishment, [Employer Name] is concerned and committed to our employees' safety and health. We refuse to tolerate violence in the workplace and will make every effort to prevent violent incidents from occurring by implementing a Workplace Violence Prevention Program (WVPP). We will provide adequate authority and budgetary resources to responsible parties so that our goals and responsibilities can be met.

All managers, supervisors and employees are responsible for implementing and maintaining our WVPP. We encourage employee participation in designing and implementing our program. We require prompt and accurate reporting of all violent incidents whether or not physical injury has occurred. We will not discriminate against victims of workplace violence.

A copy of this policy statement and our WVPP is readily available to all employees and from each manager and supervisor.

Our program ensures that all employees, including supervisors and managers, adhere to work practices that are designed to make the workplace more secure, and do not engage in verbal threats or physical actions which create a security hazard for others in the workplace.

All employees, including managers and supervisors, are responsible for using safe work practices, for following all directives, policies and procedures, and for assisting in maintaining a safe and secure work environment.

The management of our establishment is responsible for ensuring that all safety and health policies and procedures involving workplace security are clearly communicated and understood by all employees. Managers and supervisors are expected to enforce the rules fairly and uniformly.

Our program will be reviewed and updated annually.

### **Responsibility**

The Workplace Violence Prevention Program Administrator is [Program Administrator] and [he/she] has the authority and responsibility for implementing the provisions of this program for [Establishment Name]. All managers, supervisors and employees are responsible for implementing and maintaining the WVPP in their work areas and for answering employee questions about the program.

In addition, a Workplace Violence Prevention Group will be established to assess the vulnerability to workplace violence at our establishment and reach agreement on preventive actions to be taken. This group will be responsible for developing employee-training programs in violence prevention and plans for responding to acts of violence. They will also audit our overall Workplace Violence Prevention Program.

**The Workplace Violence Prevention Group will consist of:**

Name	Title	Phone

**Compliance**

We have established the following policy to ensure compliance with our rules on workplace security.

Management of our establishment is committed to ensuring that all safety and health policies and procedures involving workplace security are clearly communicated and understood by employees. All employees are responsible for using safe work practices, for following all directives, policies and procedures, and for assisting in maintaining a safe and secure work environment.

Our system ensures that all employees, including supervisors and managers, comply with work practices that are designed to make the workplace more secure, and do not engage in threats or physical actions which create a security hazard for others in the workplace. It includes:

- ☐ Informing employees, supervisors and managers about our Workplace Violence Prevention Program.
- ☐ Evaluating the performance of all employees in complying with our establishment's workplace security measures.
- ☐ Recognizing employees who perform work practices which promote security in the workplace.
- ☐ Providing training and/or counseling to employees who need to improve work practices designed to ensure workplace security.
- ☐ Disciplining employees for failure to comply with workplace security practices.
- ☐ The following practices that ensure employee compliance with workplace security directives, policies and procedures. [Insert list specific to your worksite.]

At our establishment, we recognize that to maintain a safe, healthy and secure workplace we must have open, two-way communication between all employees, including managers and supervisors, on all workplace safety, health and security issues. Our establishment has a communication system designed to encourage a continuous flow of safety, health and security information between management and our employees without fear of reprisal and in a form that is readily understandable. Our communication system consists of the following items:

- ☐ New employee orientation on our establishment's workplace security policies, procedures and work practices.
- ☐ Periodic review of our Workplace Violence Prevention Program with all personnel.

- ☐ Training programs designed to address specific aspects of workplace security unique to our establishment.
- ☐ Regularly scheduled safety meetings with all personnel that include workplace security discussions.
- ☐ A system to ensure that all employees, including managers and supervisors, understand the workplace security policies.
- ☐ Posted or distributed workplace security information.
- ☐ A system for employees to inform management about workplace security hazards or threats of violence.
- ☐ Procedures for protecting employees who report threats from retaliation by the person making the threats.
- ☐ Our establishment has fewer than ten employees and communicates with and instructs employees orally about general safe work practices with respect to workplace security.
- ☐ Other: \_\_\_\_\_

## Hazard Assessment

The Workplace Violence Prevention Group will perform workplace hazard assessment for workplace security in the form of record keeping and review, periodic workplace security inspections, and a workplace survey. The assessment group will identify workplace violence and security issues and make recommendations to management and employees.

## Record Keeping and Review

*Note: Care must be taken to ensure appropriate confidentiality of medical and personnel records, as required by WISHA (Washington Industrial Safety and Health Act), Department of Health, ADA (Americans with Disabilities Act) and other applicable regulations or policies.*

Periodic updates and reviews of the following workplace violence reports and records will be made:

- ☐ Occupational Safety and Health Administration (OSHA) 300 logs
- ☐ Workplace violence incident reports
- ☐ Information compiled for recording assault incidents or near-assault incidents (i.e. Threat and Assault Log)
- ☐ Insurance records
- ☐ Police reports
- ☐ Workplace survey
- ☐ Accident investigations
- ☐ Training records
- ☐ Grievances
- ☐ Inspection information
- ☐ Other relevant records or information

The records review will be performed on the following schedule: \_\_\_\_\_

## Workplace Security Inspections

Periodic inspections to identify and evaluate workplace security hazards and threats of workplace violence will be performed by the following observer(s) in the following areas of our workplace:

Observer	Area

### Periodic inspections are performed according to the following schedule:

- ☐ \_\_\_\_\_ (Frequency – weekly, monthly, etc);
- ☐ When we initially established our Workplace Violence Prevention Program;
- ☐ When new, previously unidentified security hazards are recognized;
- ☐ When occupational injuries or threats of injury occur; and
- ☐ Whenever workplace security conditions warrant an inspection.

Periodic inspections for security hazards consist of identification and evaluation of workplace security hazards and changes in employee work practices, and may require assessing for more than one type of workplace violence. Our establishment performs inspections for each type of workplace violence by using the methods specified below to identify and evaluate workplace security hazards.

### Inspections for workplace security hazards from violence by strangers (Type 1) include assessing:

- ☐ The exterior and interior of the workplace for its attractiveness to robbers.
- ☐ The need for security surveillance measures, such as mirrors or cameras.
- ☐ Posting of signs notifying the public that limited cash is kept on the premises.
- ☐ Procedures for employee response during a robbery or other criminal act.
- ☐ Procedures for reporting suspicious persons or activities.
- ☐ Posting of emergency telephone numbers for law enforcement, fire and medical services where employees have access to a telephone with an outside line.
- ☐ Limiting the amount of cash on hand and using time access safes for large bills.
- ☐ Staffing levels during evening hours of operation and at other high risk times.
- ☐ The use of work practices such as “buddy” systems, as appropriate, for identified risks (e.g., walking employees to their cars or mass transit stops at the end of the work day).
- ☐ Adequacy of lighting and security for designated parking lots or areas.
- ☐ Other: \_\_\_\_\_

**Inspections for workplace security hazards from violence by customers or clients (Type 2)**  
**include assessing:**

- ☐ Access to, and freedom of movement within, the workplace.
- ☐ Adequacy of workplace security systems, such as door locks, security windows, physical barriers and restraint systems.
- ☐ Frequency and severity of threatening or hostile situations that may lead to violent acts by persons who are service recipients of our establishment.
- ☐ Employees' skill in safely handling threatening or hostile service recipients.
- ☐ Effectiveness of systems and procedures to warn others of a security danger or to summon assistance, e.g. alarms or panic buttons.
- ☐ The use of work practices such as "buddy" systems, as appropriate, for identified risks (e.g., walking employees to their cars or mass transit stops at the end of the work day).
- ☐ Adequacy of lighting and security for designated parking lots or areas.
- ☐ The availability of employee escape routes.
- ☐ Other: \_\_\_\_\_

**Inspections for workplace security hazards from violence by co-workers (Type 3)**  
**include assessing:**

- ☐ How well our establishment's anti-violence policy has been communicated to employees, supervisors and managers.
- ☐ How well our establishment's management and employees communicate with each other.
- ☐ How well our employees, supervisors and managers know the warning signs of potential workplace violence.
- ☐ Access to, and freedom of movement within, the workplace by non-employees, specifically recently discharged employees.
- ☐ Frequency and severity of employee-reported threats of physical or verbal abuse by managers, supervisors or other employees.
- ☐ Any prior violent acts, threats of physical violence, verbal abuse, property damage or other signs of strain or pressure in the workplace.
- ☐ Employee disciplinary and discharge procedures.
- ☐ Other: \_\_\_\_\_

**Inspection for workplace security hazards from violence by personal relations (Type 4)**  
**include assessing:**

- ☐ Access to, and freedom of movement within, the workplace by non-employees, specifically personal relations with whom one of our employee's is having a dispute.
- ☐ Frequency and severity of employee-reported threats of physical or verbal abuse which may lead to violent acts by a personal relation.
- ☐ Adequacy of workplace security systems, such as door locks, security windows, and physical barriers.

- ☐ Any prior violent acts, threats of physical violence, verbal abuse, property damage or other signs.
- ☐ The use of work practices such as “buddy” systems, as appropriate, for identified risks (e.g., walking employees to their cars or mass transit stops at the end of the work day).
- ☐ Adequacy of lighting and security for designated parking lots or areas.
- ☐ Warnings or police involvement to remove personal relations of employees from the worksite and effectiveness of restraining orders.

### **Workplace Survey**

Under the direction of the Workplace Violence Prevention Administrator and Group, we distributed a survey among all of our employees to identify any additional issues that were not noted in the records review or the security inspection. (See sample survey, Appendix B.)

### **Final Recommendations**

Based on the records review, workplace security inspections and workplace survey, the Workplace Violence Prevention Group has identified the following issues that need to be addressed:

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## **Workplace Hazard Control and Prevention**

In order to reduce the risk of workplace violence, the following measures have been recommended:

### **Engineering Controls and Building or Work Area Design:**

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### **Workplace Practices:**

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Management has instituted the following as a result of the workplace violence hazard assessment and the recommendations made by the Workplace Violence Prevention Group:

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These changes were completed on [date]. \_\_\_\_\_

Policies and procedures developed as a result of the Workplace Violence Prevention Group's recommendations:

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## Training and Instruction

We have established the following policy on training all employees with respect to workplace violence and security.

All employees, including managers and supervisors, shall have training and instruction on general and job-specific workplace security practices. Training and instruction shall be provided when the Workplace Violence Prevention Program is first established and periodically thereafter. Training shall be provided to all new employees and to other employees for whom training has not previously been provided. It shall also be provided to all employees, supervisors, and managers given new job assignments for which specific workplace security training for the job assignment has not previously been provided. Additional training and instruction will be provided to all personnel whenever the employer is made aware of new or previously unrecognized security hazards.

General workplace violence and security training and instruction includes, but is not limited to, the following:

- ☐ Explanation of the Workplace Violence Prevention Program including measures for reporting any violent acts or threats of violence.
- ☐ Recognition of workplace security hazards including the risk factors associated with the four types of violence.
- ☐ Measures to prevent workplace violence, including procedures for reporting workplace security hazards or threats to managers and supervisors.
- ☐ Ways to defuse hostile or threatening situations.
- ☐ Measures to summon others for assistance.
- ☐ Employee routes of escape.
- ☐ Notification of law enforcement authorities when a criminal act may have occurred.
- ☐ Emergency medical care provided in the event of any violent act upon an employee.
- ☐ Post-event trauma counseling for those employees desiring such assistance.

In addition, we provide specific instructions to all employees regarding workplace security hazards unique to their job assignment, to the extent that such information was not already covered in other training.

We have chosen the following items for training and instruction for managers, supervisors and employees:

- ☐ Crime awareness.
- ☐ Location and operation of alarm systems, panic buttons and other protective devices.
- ☐ Communication procedures.

- ☐ Proper work practices for specific workplace activities, occupations or assignments, such as late night retail sales, taxi-cab driver, security guard, law enforcement, health care, public transportation, etc.
- ☐ Self-protection.
- ☐ Dealing with angry, hostile or threatening individuals.
- ☐ Using the “buddy” system or other assistance from co-employees.
- ☐ Awareness of indicators that lead to violent acts by service recipients.
- ☐ Employee assistance programs.
- ☐ Review of anti-violence policy and procedures.
- ☐ Managing with respect and consideration for employee well-being.
- ☐ Pre-employment screening practices.
- ☐ Role playing a violent incident.

## Incident Investigation

Our procedures for investigating incidents of workplace violence — threats and physical injury — include:

- ☐ Reviewing all previous incidents.
- ☐ Visiting the scene of an incident as soon as possible.
- ☐ Interviewing threatened or injured employees and witnesses.
- ☐ Examining the workplace for security risk factors associated with the incident, including any previous reports of inappropriate behavior by the perpetrator.
- ☐ Determining the cause of the incident.
- ☐ Taking corrective action to prevent the incident from recurring.
- ☐ Recording the findings and corrective actions taken.
- ☐ Other: \_\_\_\_\_

## Appendix B: Sample Forms

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*These sample forms may be useful to carry out or enhance your workplace violence program. They are not mandatory, and should be tailored to fit your organization's needs.*

### **Sample Assault Incident Report Form**

This type of form can be used to report any threatening remark or act of physical violence against a person or property, whether experienced or observed. Individuals may be more forthcoming with information if the form is understood to be voluntary and confidential. The form also needs to identify where it should be sent after completion (for example, workplace violence prevention group or safety committee representative).

### **Sample Threat and Assault Log**

This type of log can help summarize and characterize reports of threats and assaults in your company over the course of a year. This information may prove helpful to your workplace violence prevention group (or administrator) when considering the need for additional hazard assessment, prevention measures or training.

### **Sample Employee Survey on Hazard Assessment**

Periodically surveying employees on workplace violence can be a valuable tool for evaluating your workplace violence prevention efforts and gathering suggestions for improving your program. Some employees may prefer not to have their names identified on a survey; making the name "optional" may increase the amount of feedback you receive.

**Assault Incident Report Form • Page 1**

Date of Incident	Year	Month	Day of Week
Location of Incident (map and sketch on reverse side)			
Name of Victim		Gender:	
		<input type="checkbox"/> Male <input type="checkbox"/> Female	
Victim Description:		Member of Labor Organization?	
<input type="checkbox"/> Employee – Job Title _____ <input type="checkbox"/> Client <input type="checkbox"/> Visitor		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Assigned Work Location (if employee)			
Supervisor		Has supervisor been notified?	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Describe the assault incident.			
List any witnesses to the incident (name and phone).			
Did the assault involve a firearm? If so, describe.			
Did the assault involve another weapon (not a firearm)? If so, describe.			
Was the victim injured? If yes, please describe.			
Who committed the assault?			
Name (if known): _____			
What is his/her status to the victim? <input type="checkbox"/> Stranger <input type="checkbox"/> Personal Relation <input type="checkbox"/> Client / Patient / Customer			
<input type="checkbox"/> Co-worker <input type="checkbox"/> Supervisor <input type="checkbox"/> Other: _____			
What was the gender of the person(s) who committed the assault?			
<input type="checkbox"/> Male <input type="checkbox"/> Female			

**Assault Incident Report Form • Page 2****Please check any risk factors applicable to this incident.**

Each company should develop and include a list of potential risk factors that may apply in its worksite.

- ☐ Contact with the public.
- ☐ Working with money.
- ☐ Delivery of passengers, goods, or services.
- ☐ Having a mobile workplace such as a taxicab or police cruiser.
- ☐ Working with unstable or volatile persons in health care, social services, or criminal justice settings.
- ☐ Working in isolation.
- ☐ Working late at night or during early morning hours.
- ☐ Working in high-crime areas.
- ☐ Guarding valuable property or possessions.
- ☐ Working in community-based settings.
- ☐ Poor lighting outside of worksite.

Other risk factor:

**What steps could be taken to avoid a similar incident in the future?**

(To avoid recreating trauma, sound judgment should be exercised in deciding when to request this information.)

Send completed form to:

Threat and Assault Log					Year	
Number of Threats and Assaults	January–June		July–December		Total	
Type of Threat or Assault	# Threats	# Assaults	# Threats	# Assaults	# Threats	# Assaults
Type 1 / Threat or assault by stranger						
Type 2 / Threat or assault by customers/clients						
Type 3 / Threat or assault by co-workers						
Type 4 / Threat or assault by personal relations						
Gender of Victims and Perpetrators	# Threats	# Assaults	# Threats	# Assaults	# Threats	# Assaults
Number of female victims						
Number of male victims						
Number of female perpetrators						
Number of male perpetrators						
Time of Threats and Assaults	# Threats	# Assaults	# Threats	# Assaults	# Threats	# Assaults
Day shift						
Evening shift						
Night shift						
On weekend						
Location of Threats and Assaults	# Threats	# Assaults	# Threats	# Assaults	# Threats	# Assaults
On work premises						
Parking lot						
Other duty station						
Other Considerations	# Threats	# Assaults	# Threats	# Assaults	# Threats	# Assaults
Threats and assaults involving firearms						
Threats and assaults involving other weapons (not firearms)						
Number of cases where the victim was working in isolation						
Result of Threats and Assaults						
Death						
Physical injury						
Stress/psychological impairment						
No injury						

## Employee Survey on Workplace Violence Hazard Assessment

Name (Optional) \_\_\_\_\_

Department/Unit \_\_\_\_\_ Date \_\_\_\_\_

Work Location (if at alternate worksite) \_\_\_\_\_

Please assess your department/unit over the last year. Circle True (T), False (F) or Don't Know (?).

Thank you for your honest assessment.

### Management Commitment and Employee Involvement

1. Violence/threats are not accepted as "part of the job" by managers, supervisors and/or employees.	T	F	?
2. Employees communicate information about potentially assaultive/threatening clients or visitors to appropriate staff.	T	F	?
3. Management communicates information to employees about incidents of workplace violence.	T	F	?
4. Employees feel they are treated with dignity and respect by other employees and management.	T	F	?
5. Employees are basically satisfied with their jobs.	T	F	?
6. Employees are basically satisfied with management.	T	F	?
7. Employees are basically satisfied with the organization (i.e., mission, vision, goals).	T	F	?
8. Employees generally feel "safe" when they are at work.	T	F	?
9. Employees are familiar with the department's/unit's violence prevention policy.	T	F	?

### Potential Risk Factors

10. Employees do not work in high-crime areas.	T	F	?
11. Employees do not work with drugs.	T	F	?
12. Employees do not work with cash.	T	F	?
13. Employees do not work with patients or clients who have a history of violent behavior or behavior disorders.	T	F	?
14. Employees do not work in isolated work areas.	T	F	?

### Hazard Prevention and Control

15. The department/unit has adequate lighting to, from and within the worksite.	T	F	?
16. The employee parking garage is secure when arriving, leaving and during changes of shift.	T	F	?
17. Access and freedom of movement within the workplace are restricted to those persons who have a legitimate reason for being there.	T	F	?
18. Alarm systems such as panic alarm buttons, silent alarms, or personal electronic alarm systems are being used for prompt security assistance.	T	F	?
19. Employees know to use security escort service after hours.	T	F	?
20. After hours, the building is locked down with only one access point.	T	F	?
21. Visitors are signed in and out.	T	F	?

Hazard Prevention and Control			
22. Exits are accessible and clearly marked.	T	F	?
23. Employees are able to locate emergency equipment such as fire alarm boxes or emergency-generator outlets.	T	F	?
24. Emergency equipment is accessible and free from obstruction.	T	F	?
25. Employees are able to locate cellular phones, power-failure phones and/or radios for emergency communication.	T	F	?
26. Employees know proper procedures if a bomb threat is announced.	T	F	?
27. Employee emergency call-back list is up-to-date and available.	T	F	?
28. Employees provide privacy to reflect sensitivity and respect for clients and visitors.	T	F	?
29. Employees use the "buddy system" to work together if problems arise.	T	F	?
30. Employees working in the field have cellular phones or other communication devices to enable them to request aid.	T	F	?
31. Staffing levels are appropriate for department/unit functions.	T	F	?
32. Reference manuals are up-to-date and available to employees.	T	F	?
33. There is a grievance policy available to employees.	T	F	?
34. There is a Safety Committee available as a resource to staff for any hazard concern.	T	F	?

Training			
35. Employees have received training on the company's workplace violence prevention program.	T	F	?
36. Employees know how to ask for assistance by phone or by alerting other staff.	T	F	?
37. Employees have been trained to recognize and handle threatening, aggressive, or violent behavior.	T	F	?
38. Employees have been trained in verbal de-escalation techniques.	T	F	?
39. Employees have been trained in self-defense/restraint procedures.	T	F	?

Incidents and Reporting			
40. This work unit/department has not experienced violent behavior and assaults or threats from strangers.	T	F	?
41. This work unit/department has not experienced violent behavior and assaults or threats from clients or customers.	T	F	?
42. This work unit/department has not experienced violent behavior and assaults or threats from others employed in the organization.	T	F	?
43. This work unit/department has not experienced domestic violence issues.	T	F	?
44. Employees are required to report incidents or threats of violence, regardless of injury or severity; the reporting system is clear.	T	F	?
45. Medical and psychological counseling services were offered to employees who have been assaulted or threatened.	T	F	?

# Appendix C: Sample Training Techniques

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## Technique #1: Review Workplace Violence Prevention

### Extent of the Problem

List statistics relative to your industry here. Use national and statewide information. You can also discuss the crime statistics of the neighborhood the company is in. Some of this information is available in the Overview Section at the beginning of this guidebook.

### Risk Factors

Discuss the risk factors in your particular industry here. Look in the section titled “Violent Incidents: Case Scenarios, Potential Risk Factors and Potential Prevention Measures” in this guidebook.

### Worksite Analysis

Discuss the violence history of your company. You can use the number of incidents, the rate and/or the types.

### Security Hardware

Have the manager of your unit show you security hardware. (Put a checklist here of equipment you have at your company to prevent violence. This might include panic buttons, video cameras, security lighting, etc.)

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### Work Practice Controls

Discuss policies and procedures you have implemented to minimize violence in your company. Include any written procedures. Be sure to address your company’s weapons policy and how to summon help in an emergency.

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### Follow Up Procedures

Report all assaults. (Include here a copy of the form your company uses to report violent incidents.)

File charges. [Company name] recommends that charges be filed in every case when an employee is assaulted. We will help you to do so including sending witnesses to testify if needed. No reprisals will be taken against any employee who is assaulted or files charges relating to an assault.

If a violent incident occurs, all affected staff will be offered counseling through an employee assistance program or other comparable counseling services.

## **Technique #2: Role Play Exercise to Defuse Violent Situations**

Read the information in the charts below. Then have employees role play a confrontation. During the role play note the signs of escalating behavior and the techniques used to control it. Afterwards have the group discuss their observations. Address the following questions: What went well? What problems were there? What responses would work better?

Write a scenario about a violent incident for a couple of employees to act out. Use a case scenario in this guidebook or make up one appropriate to your company.

## **Technique #3: Hands-on Practice**

If the violence in your workplace comes from unarmed people such as patients, you may want to train your employees in self defense and restraining techniques. Have your employees actually try out the techniques. Remember, in cases with armed perpetrators, such as robberies, it is usually safer to submit to the perpetrator's demands.

## Five Warning Signs of Escalating Behavior

Confusion	
<b>Warning Signs</b>	<b>Possible Responses</b>
Behavior characterized by bewilderment or distraction. Unsure or uncertain of the next course of action.	<ul style="list-style-type: none"><li>▪ Listen to their concerns.</li><li>▪ Ask clarifying questions.</li><li>▪ Give them factual information.</li></ul>
Frustration	
<b>Warning Signs</b>	<b>Possible Responses</b>
Behavior characterized by reaction or resistance to information. Impatience. Feeling a sense of defeat in the attempt of accomplishment. May try to bait you.	<ul style="list-style-type: none"><li>▪ See steps above.</li><li>▪ Relocate to quiet location or setting.</li><li>▪ Reassure them.</li><li>▪ Make a sincere attempt to clarify concerns.</li></ul>
Blame	
<b>Warning Signs</b>	<b>Possible Responses</b>
Placing responsibility for problems on everyone else. Accusing or holding you responsible. Finding fault or error with the action of others. They may place blame directly on you. Crossing over to potentially hazardous behavior.	<ul style="list-style-type: none"><li>▪ See steps above.</li><li>▪ Disengage, bring second party into discussion.</li><li>▪ Use teamwork approach.</li><li>▪ Draw client back to facts.</li><li>▪ Use probing questions.</li><li>▪ Create “Yes” momentum.</li></ul>
Anger — Judgment call required	
<b>Warning Signs</b>	<b>Possible Responses</b>
Characterized by a visible change in body posture and disposition. Actions include pounding fists, pointing fingers, shouting or screaming. This signals very risky behavior.	<ul style="list-style-type: none"><li>▪ Utilize venting techniques.</li><li>▪ Don’t offer solutions.</li><li>▪ Don’t argue with comments made.</li><li>▪ Prepare to evacuate or isolate.</li><li>▪ Contact supervisor and/or security office.</li></ul>
Hostility — Judgment call required	
<b>Warning Signs</b>	<b>Possible Responses</b>
Physical actions or threats which appear imminent. Acts of physical harm or property damage. Out-of-control behavior signals they have crossed over the line.	<ul style="list-style-type: none"><li>▪ Disengage and evacuate.</li><li>▪ Try to isolate person if it can be done safely.</li><li>▪ Alert supervisor and contact security office immediately.</li></ul>

## Personal Conduct to Minimize Violence\*

Follow these suggestions in your daily interactions with people to de-escalate potentially violent situations. If at any time a person's behavior starts to escalate beyond your comfort zone, disengage.

### Do

- Project calmness, move and speak slowly, quietly and confidently.
- Be an empathetic listener: Encourage the person to talk and listen patiently.
- Focus your attention on the other person to let them know you are interested in what they have to say.
- Maintain a relaxed yet attentive posture and position yourself at a right angle rather than directly in front of the other person.
- Acknowledge the person's feelings. Indicate that you can see he/she is upset.
- Ask for small, specific favors such as asking the person to move to a quieter area.
- Establish ground rules if unreasonable behavior persists. Calmly describe the consequences of any violent behavior.
- Use delaying tactics which will give the person time to calm down. For example, offer a drink of water (in a disposable cup).
- Be reassuring and point out choices. Break big problems into smaller, more manageable problems.
- Accept criticism in a positive way. When a complaint might be true, use statements like "You are probably right" or "It was my fault." If the criticism seems unwarranted, ask clarifying questions.
- Ask for his/her recommendations. Repeat back to him/her what you feel he/she is requesting of you.
- Arrange yourself so that a visitor cannot block your access to an exit.

### Do Not

- Use styles of communication which generate hostility such as apathy, brush off, coldness, condescension, robotism, going strictly by the rules or giving the run-around.
- Reject all of a client's demands from the start.
- Pose in challenging stances such as standing directly opposite someone, hands on hips or crossing your arms. Avoid any physical contact, finger pointing or long periods of fixed eye contact.
- Make sudden movements which can be seen as threatening. Notice the tone, volume and rate of your speech.
- Challenge, threaten, or dare the individual. Never belittle the person or make him/her feel foolish.
- Criticize or act impatiently toward the agitated individual.
- Attempt to bargain with a threatening individual.
- Try to make the situation seem less serious than it is.
- Make false statements or promises you cannot keep.
- Try to impart a lot of technical or complicated information when emotions are high.
- Take sides or agree with distortions.
- Invade the individual's personal space. Make sure there is a space of three feet to six feet between you and the person.

\* From Combating Workplace Violence: Guidelines for Employers and Law Enforcement. International Association of Chiefs of Police. 1996.

# Appendix D:

## Sample Policy on Domestic Violence in the Workplace

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### Description

Domestic violence is abusive behavior that is either physical, sexual, and/or psychological, intended to establish and maintain control over a partner. Domestic violence is a serious problem that affects people from all walks of life. It can adversely affect the well-being and productivity of employees who are victims, as well as their co-workers. Other effects of domestic violence in the workplace include increased absenteeism, turnover, health care costs, and reduced productivity.

### Policy Statement

The *[Employer Name]* will not tolerate domestic violence including harassment of any employee or client while in our facilities, vehicles, on our property, or while conducting business. This includes the display of any violent or threatening behavior (verbal or physical) that may result in physical or emotional injury or otherwise places one's safety and productivity at risk.

Any employee who threatens, harasses, or abuses someone at our workplace or from the workplace using any company resources such as work time, workplace phones, FAX machines, mail, email, or other means may be subject to corrective or disciplinary action, up to and including dismissal. Corrective or disciplinary action may also be taken against employees who are arrested, convicted or issued a permanent injunction as a result of domestic violence when such action has a direct connection to the employee's duties in our company.

The *[Employer Name]* is committed to working with employees who are victims of domestic violence to prevent abuse and harassment from occurring in the workplace. No employees will be penalized or disciplined solely for being a victim of harassment in the workplace. Our company will provide appropriate support and assistance to employees who are victims of domestic violence. This includes: confidential means for coming forward for help, resource and referral information, work schedule adjustments or leave as needed to obtain assistance, and workplace relocation as feasible.

Employees who are perpetrators of domestic violence are also encouraged to seek assistance. Our company will provide information regarding counseling and certified treatment resources, and make work schedule arrangements to receive such assistance.

### Special Instructions for Employees

It is important that all employees know how best to respond to the effects of domestic violence in the workplace. In addition, they also should be aware of physical or behavioral changes in other employees and know who — personnel officer, manager, and or employee advisory service/resource — they can contact for advice. They should not attempt to diagnose the employee.

Managers/supervisors or human resource professionals in our company should receive domestic violence training. Our company should also:

- Be responsive when an employee who is either the victim or perpetrator of domestic violence asks for help.

- Maintain confidentiality. Information about the employee should only be given to others on a need-to-know basis.
- Work with the victim, personnel office, manager, employee advisory service/resource, available security staff, law enforcement, and community domestic violence programs, if necessary, to assess the need for and develop a workplace safety plan for the victim. Victims of domestic violence know their abusers better than anyone else. When it comes to their own personal safety, offer to assist them in developing a workplace safety plan, but allow them to decide what goes in it. If it is determined that other employees or clients are at risk, it is essential to take measures to provide protection for them.
- Adjust the employee's work schedule and/or grant leave if the employee needs to take time off for medical assistance, legal assistance, court appearances, counseling, relocation, or to make other necessary arrangements to create a safe situation. Be sure to follow all applicable personnel rules.
- Maintain communication with the employee during the employee's absence. Remember to maintain confidentiality of the employee's whereabouts.
- Post information about domestic violence in your work area. Also, have information available where employees can obtain it without having to request it or be seen removing it—such as rest rooms, lunchrooms, or where other employee resource information is located.
- Honor all civil protection orders. As appropriate, participate in court proceedings in obtaining protection orders on behalf of the employee.
- Maintain a list of services available to victims and perpetrators of domestic violence. This list should include: Employee Advisory Service/Resource, local shelters, certified domestic violence treatment programs available to perpetrators, information on how to obtain civil orders of protection, and any available community resources.
- Advise and assist supervisors and managers in taking corrective or disciplinary actions against perpetrators of domestic violence.

### Options for Employees Who Are Victims of Domestic Violence

- Tell a trusted co-worker, supervisor, or manager, and ask for help.
- Contact your personnel officer for assistance.
- Contact the Employee Advisory Service/Resource.
- Contact the 24-hour Washington State Domestic Violence Hotline at 1-800-562-6025 (V/TTY).
- Call the local police.
- Notify your supervisor of the possible need to be absent. Find out what work schedule or leave options are available to you. Be clear about your plan to return to work and maintain communications with your supervisor during your absence.
- If appropriate and if safety is a concern, submit a recent photograph of the abuser and a copy of your protection order to your supervisor. This assists your employer in identifying the abuser should he/she appear in the workplace.

## Options for Employees Who Are Perpetrators of Domestic Violence

- Tell a trusted co-worker, supervisor, or manager, and ask for help.
- Contact your personnel officer for assistance.
- Contact the Employee Advisory Service/Resource.
- Obtain a referral to a certified domestic violence perpetrators' treatment program.

## Components of a Workplace Safety Plan

- Consider obtaining civil orders for protection and make sure that they remain current and are accessible at all times. A copy should be provided to the employee's supervisor, reception area, and security areas if there is a concern about the abusive partner coming to the work site.
- The employee should consider providing a picture of the perpetrator to reception areas and/or security.
- A company contact person should be identified for the employee to reach when needed.
- An emergency contact person should be identified should the employer be unable to contact the employee.
- Review the employee's parking arrangements for possible changes.
- Consider changing the employee's work schedule.
- Consider what steps need to be taken to provide for the safety of other employees and clients.
- Consider having the employee's telephone calls screened at work.

## Appendix E: Selected Laws and Regulations

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*This appendix primarily focuses on laws and regulations as they apply to workplaces. Along with the selected list that follows, employers may want to learn more about general criminal laws (e.g., those covering assault, harassment and stalking) that can apply to workplace violence situations. If illegal acts occur in the workplace, an appropriate response involves law enforcement officials as well as administrative action.*

**Note that the laws and regulations detailed in this appendix are mandatory — as opposed to voluntary — for businesses subject to these legal requirements.**

### **Late Night Retail Workers Crime Protection: WAC 296-832**

The Late Night Retail Workers Crime Protection Standard provides specific violence-related direction to retail businesses that operate between 11:00 p.m. and 6:00 a.m. Restaurants, taverns, hotels and other lodging facilities are not covered by this rule.

The rule was created to improve the safety of workers in the late night retail industry. In general, the rule requires:

- Crime prevention training for workers.
- Safety measures, including drop safes and exterior lighting that remains on during all hours of operation.
- Signage announcing that workers cannot access the safe and that the cash register contains only the minimum amount of cash needed to conduct business.

To view the entire rule, visit [www.Lni.wa.gov/Safety](http://www.Lni.wa.gov/Safety) and look for Late Night Retail Worker Crime Prevention under “L” in the Index.

### **Safety in Health Care Settings: RCW 49.19**

The safety in health care settings law requires employers in specific health care worksites to develop and implement a plan to reasonably prevent and protect employees from violence. The law requires that these plans include:

- A hazard assessment of the facilities.
- Training for employees on the workplace violence prevention plan.
- Follow-up on any workplace violence incidents that describes steps taken in response to the incident.
- A record of violent acts for at least 5 years from when the act is reported.

### **Workplace Violence Safety Plan in Public and Private Facilities for the Mentally Ill: RCW 72.23.400**

This law requires employers in these settings to develop and implement a plan that would reasonably prevent and protect employees from violence. The plan must include:

- A hazard assessment of their facilities.
- Employee training on the plan.

- Follow up on any workplace violence incidents.
- A review of the plan at least annually.

## Other L&I Regulations That May Apply to Workplace Violence Hazards

Several existing provisions of the Washington Administrative Code (WAC) may apply to the hazards of violence in the workplace, including (but not necessarily limited to) the following:

**WAC 296-800-14025** requires employers “to establish, supervise, and enforce your accident prevention program in a manner which is effective in practice.”

**WAC 296-800-32005** requires employers to report fatalities and hospitalization of one or more employees to Labor & Industries within eight hours.

**WAC 296-800-14005** requires employers to “develop a formal [written] accident-prevention program, tailored to the needs of the particular plant or operation and to the type of hazards involved.” The program must include “a safety orientation program” that contains (among other things) information about reporting injuries and unsafe conditions, the use and care of personal protective equipment, and emergency procedures.

**WAC 296-800-11005** requires employers “to furnish to each employee a place of employment free from recognized hazards that are causing or likely to cause serious injury or death” to employees. **WAC 296-800-11010** requires employers “to adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe” and to “do every other thing reasonably necessary to protect the life and safety of employees.”

**WAC 296-800-16005** requires employers “to assess the workplace to determine if hazards are present, or likely to be present, which necessitate the use of personal protective equipment (PPE)” and to select appropriate PPE and require its use.

**WAC 296-800-310** requires “every building or structure, new or old, designed for human occupancy” to be “provided with exits sufficient to permit the prompt escape of occupants in case of fire or other emergency.”

**WAC 296-27-01101** requires employers to maintain records of occupational injuries and illnesses.

**WAC 296-360-020** prohibits an employer from firing or otherwise retaliating against an employee for reporting unsafe work conditions, including concerns about potential workplace violence.

**WAC 296-800-21005** requires “lighting which is adequately adjusted to provide a margin of safety for all work tasks” and specifies minimum indoor and outdoor lighting levels.

For details of existing regulations or policy that may apply to workplace violence hazards, contact the L&I service center nearest you.

## **Selected Laws Relevant to Workplace Violence**

The following is a summary of selected federal and state laws that may relate to workplace violence issues in your workplace. The summary is not intended to be and should not be used as a substitute for specific legal advice. For legal advice consult your attorney or legal counsel.

### **Workers' Compensation**

Whether an employer is self-insured or participates in the state fund, workers' compensation laws (RCW Title 51) are intended to compensate workers for injuries arising out of or in the course of employment. Generally, an employee is limited to the remedies offered under the workers' compensation laws and cannot bring a separate civil action unless evidence of an intentional injury is present.

### **Discrimination**

Employers are prohibited from discriminating against employees on the basis of any protected characteristics. Both the Americans with Disabilities Act (ADA, 2 U.S.C. § 1202) and the Washington State Law Against Discrimination (RCW 49.60) offer job protection to "qualified individuals with a disability," including both physical and mental disabilities. If an alleged perpetrator of violence claims that his or her behavior is caused by a mental disability and requests accommodation of that disability, the employer must carefully weigh the options and outcomes of any decisions in dealing with that situation.

However, even if an employee's rude, insubordinate, or threatening behavior is caused by a qualifying disability such as clinical depression or a diagnosed mood disorder, that does not mean an employer has no options. The ADA only requires "reasonable" accommodation for individuals who are "otherwise qualified" for the position.

The ADA applies to employers with 15 or more employees. The Washington State Law Against Discrimination applies to employers with eight or more employees.

## **Tips for Reducing the Risk of Workplace Violence**

When an incident of workplace violence occurs, an employer could face civil claims from three different parties: the victims, the violators, and even third parties, such as witnesses to the violence. These claims include but are not limited to negligent hiring, negligent retention, wrongful discharge, and failure to warn. Various measures an employer may take to limit potential liability are listed in the following pages.

### **Background Checks/References**

Employers should check a job applicant's background as thoroughly as possible. Ask for complete prior employment history, education, and/or military service. Request that the applicant provide an explanation for any time gaps between jobs. Speak with previous employers regarding the applicant and any special concerns regarding the particular job in question.

## **Criminal Arrests and Convictions**

The Washington State Human Rights Commission administers regulations covering fair and unfair pre-employment inquiries about arrests and convictions (WAC 16212). Employers can ask applicants about criminal convictions that reasonably relate to the job duties of the position or request that information from the Washington State Patrol. Such inquiries can only address convictions or release from prison that occurred within the last 10 years. When employers inquire about arrests, they must ask whether charges are still pending, have been dismissed or led to a conviction of a crime involving behavior which would adversely affect job duties or the position. An arrest by itself is not a reliable indicator of criminal behavior.

Law enforcement agencies, state agencies, school districts, businesses and other organizations that have a direct responsibility for the supervision, care or treatment of children or vulnerable adults are exempt from these regulations. Thorough background checks are encouraged for positions that are particularly risky. In some cases, they are required for employers who provide care, supervision or treatment for children or vulnerable adults (RCW 43.20A.710, RCW 43.43.830–842, RCW 72.23.035).

As a matter of preventative employment practice, employers should include a disclaimer, such as “An arrest or conviction record will not necessarily bar you from employment with the company.”

## **Credit Checks**

A credit report can help to verify information on a job application. Include a statement in the job application form that indicates that credit checks will be performed and that the applicant agrees to allow such credit checks.

Washington has a Fair Credit Reporting Act. Under the Washington law, an employer may not take any adverse employment action based in whole or in part on information contained in a “consumer report” until it has advised the consumer against whom such adverse action is to be taken, supplied the name and address of the consumer reporting agency making the report, and given the consumer an opportunity to respond to any information in the report that is disputed.

## **Medical Examinations and Inquiries**

The ADA prohibits employers from making medical inquiries into the health or condition of a current employee, except under the following conditions: (1) when the employee is having difficulty performing the job effectively; (2) when the employee becomes disabled, including on-the-job injuries; (3) when the employee has requested accommodation; (4) when required by other laws; or (5) in conjunction with voluntary health screening programs.

If an employee’s behavior raises concerns for the employer because it is impacting job performance, the employer may require a medical examination or question the employee. However, the examinations or inquiries must be job-related and should focus on the employee’s ability to perform the job. The employer should provide the medical professional with an updated job description so any analysis can focus on the essential job duties. The medical professional should address the nature of the condition, duties that the employee cannot perform, expected duration of the disability, necessary limitations on activity, and whether a potential threat to health and safety exists. Finally, the employee should sign a release of information to the employer.

## **Drug and Alcohol Testing**

Although the ADA prohibits medical examinations that screen individuals for disabilities, a test to determine whether illegal drugs are currently being used is not considered a “medical examination” for the purpose of the ADA. (42 U.S.C. § 12114(d)(1)).

In contrast to tests for illegal drugs, blood alcohol tests, breath alcohol tests, and urine alcohol tests are considered medical examinations and are limited to those circumstances when medical exams are permitted when they are job-related and consistent with business necessity. (42 U.S.C. § 12112 (c) (4)(A)).

## **Workplace Searches**

Public sector employers are governed by the right of privacy derived from the federal and state constitutional protections against unreasonable searches and seizures. The constitutional right hinges on whether the employer violates an employee’s reasonable expectation of privacy.

Private sector employers generally may search on-property or employer-owned vehicles, desks, lockers, as well as packages, lunch boxes and the like brought to or taken from work. The employer should have a reasonable basis for any search and conduct the search in a reasonable manner. “Reasonable basis” does not include discriminating on the basis of race, sex, ethnic origin or other such characteristic. Employers may therefore wish to explain why any searches are necessary, establish search procedures that are minimally intrusive of employees’ privacy, and ensure non-discriminatory criteria for searches are identified in advance and equitably applied. Inform employees that refusal to submit may lead to discipline or discharge for insubordination. However, avoid forcing employees to submit because detaining an employee involuntarily may lead to liability for false imprisonment.

# Appendix F:

## Other Resources on Workplace Violence

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Resources to develop a workplace violence prevention program, offer training for employees, or research the subject, are available from the state Department of Labor & Industries (L&I) and other sources.

### **L&I Safety and Health Video Library and Resource Center**

L&I's Safety and Health Video Library and Resource Center has several videos on workplace violence available for loan.

Visit **[www.Lni.wa.gov/Videos](http://www.Lni.wa.gov/Videos)** to see a list of the available videos or call 1-800-574-9881.

### **Other Publications**

Other publications are available on workplace violence. Many can be found by visiting **[www.Lni.wa.gov/WorkplaceViolence](http://www.Lni.wa.gov/WorkplaceViolence)**.

### **Internet Resources**

Additional resources on workplace violence can be found at these websites:

- Washington State Hospital Association: **[www.wsha.org](http://www.wsha.org)**
- Occupational Safety and Health Administration: **[www.osha.gov](http://www.osha.gov)**
- Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health: **[www.cdc.gov/niosh/topics/violence](http://www.cdc.gov/niosh/topics/violence)**
- Oregon OSHA: **[www.orosha.org](http://www.orosha.org)**
- U.S. Bureau of Labor Statistics: **[www.bls.gov](http://www.bls.gov)**
- WorkSafe BC (British Columbia): **[www.worksafebc.com](http://www.worksafebc.com)**

## Appendix G: Technical Assistance and Training

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L&I provides free safety consultations to more than 2,000 Washington companies each year. Upon request, a safety and health consultant will visit any worksite and offer suggestions to improve safety, accident prevention programs and offer ways to save money on industrial insurance. The service is provided at no cost.

Safety consultants can also bring workshops to businesses upon request. Visit **[www.Lni.wa.gov/SafetyConsultants](http://www.Lni.wa.gov/SafetyConsultants)** for more information or call 1-800-423-7233. You can also call any of our regional offices for help.



- For information in Spanish (Información sobre seguridad en español): **[www.Lni.wa.gov/Seguridad](http://www.Lni.wa.gov/Seguridad)**
- L&I website: **[www.Lni.wa.gov](http://www.Lni.wa.gov)**
- Safety and health information: **[www.Lni.wa.gov/Safety](http://www.Lni.wa.gov/Safety)**
- L&I forms and publications: **[www.Lni.wa.gov/FormPub](http://www.Lni.wa.gov/FormPub)**

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