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MNHS 5 December 2014

MEMORANDUM FOR All DMNA State Employees and Supervisors

SUBJECT: HUMAN RESOURCES BULLETIN 2014-10 – Workplace Violence Prevention Program

1. PURPOSE STATEMENT

As stated in the Adjutant General's policy (TAG Policy) against Violence in the Workplace, the New York State Division of Military and Naval Affairs (DMNA) is committed to providing a safe and secure environment for employees. Workplace violence presents a serious occupational safety hazard to our agency, staff, clients and guests. Threats, menacing behavior, or acts of violence against employees, guests, or other individuals, by anyone on DMNA property will not be tolerated. In such cases a thorough investigation and appropriate action will be taken, including summoning criminal justice authorities when warranted. DMNA employees are responsible for helping to create an environment of mutual respect for each other, as well as guests, by following all policies, procedures and program requirements and maintaining a safe and secure work environment.

2. PROCEDURE OVERVIEW

DMNA's Workplace Violence Prevention Program (WVPP) is designed to provide guidance for the implementation of TAG Policy, and to meet the requirements of New York State Labor Law Section 27-b and Title 12 NYCRR Section 800.6, "Public Employer Workplace Violence Prevention Program." The goal of the WVPP is to promote the safety and well-being of all people in our workplace. All incidents of violence or threatening behavior will be responded to immediately upon notification.

a. DEVELOPMENT of WVPP includes:

i. Participation of employees and authorized employee representatives in program development and implementation;
ii. Evaluation of risk factors and implementation of measures to control identified risks and prevent violent incidents;
iii. Providing employee information and training as required;
iv. Development and maintenance of a reporting system for threats, disruptive behaviors, physical aggression and all forms of violence;
v. Annual review of the WVPP.

3. DEFINITIONS AND ROLES OF PARTICIPANTS

a. DEFINITIONS:

- Workplace Violence Prevention Program (WVPP): An employer program designed to prevent, minimize and respond to any workplace violence; the development and implementation of which is required by Article 2, Section 27-b of the New York State Labor Law.

- Workplace Violence Program Coordinator: Person responsible for the overall coordination of the agency's WVPP.

- Authorized Employee Representative (AER): An employee authorized by employees or the designated representative of an employee organization, recognized or certified to represent DMNA employees pursuant to Article 14 of the Civil Service Law (i.e. CSEA Representative).

- MNFE/WVPP Liaison: Person designated by agency management to be the contact for all building/facility related concerns for Armories and Training Sites.

- Air Base/WVPP Liaison: Person designated by agency management to be the contact for all building/facility related concerns for Air Bases.

- Supervisor: Any person within the employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding violation of a law, rule or regulation to which an employee submits written notice.

- Workplace: Any location away from an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment.

- Workplace Violence: Any physical assault or acts of aggressive behavior occurring where a public employee performs any work-related duty in the course of his or her employment.

- Workplace Violence Incident - includes but is not limited to:

  i. An attempt or threat, whether verbal or physical, to inflict physical injury upon an employee;
  ii. Any intentional display of force which would give an employee reason to fear or expect bodily harm;
  iii. Intentional and wrongful physical contact with a person without his or her consent that entails some injury;

iv. Stalking an employee with the intent of causing fear of material harm to the physical safety and health of such employee when such stalking has arisen through and in the course of employment;
v. Damage and/or destruction of employee property with the impact of intimidation or harassment to the recipient;
vi. Threatening or harassing behaviors, in person or electronically, with the impact of causing fear or intimidation to the recipient;

- Categories of Workplace Violence - describes the relationship between the perpetrator and the target of workplace violence:

  i. Type 1- Criminal: Violent acts by persons who have no other connection with the workplace but enter to commit a robbery or other crime. (e.g. mugging of an employee in a worksite parking lot)

  ii. Type 2-Customer/Contractor/Traveling public: Violence directed at employee by customer, contractor, traveling public, or others whom the public employer provides a service. (e.g. Assault by a contractor at a DMNA work location)

  iii. Type 3 Co-Worker: Violence against coworker, supervisor or manager by a present or former employee.

  iv. Type 4 Personal: Violence in the workplace by someone who has a personal relationship with an employee. This refers to domestic violence situations and is usually perpetrated by an acquaintance or family member while the employee is at work.

- Serious Violation: Failure to support and implement the agency workplace violence program; failure to address situations which could result in serious physical harm.

- Imminent Danger: Any conditions or practices that exist in the workplace which could reasonably be expected to cause death or serious physical harm.

- Serious Physical Harm: Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

- Retaliatory Action: The discharge, suspension, demotion, penalization or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

- Privacy Concern Case: An injury or illness to an intimate body part or the reproductive system; An injury or illness resulting from a sexual assault; Mental illness; HIV infection; Needle stick injuries and cuts from sharp objects that are or may be contaminated with another person's blood or other potentially infectious material; and other injuries or illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the Incident Report form.

- Risk Evaluation and Determination (Risk Assessment): An inspection or examination of the workplace to determine if existing or potential hazards that might place employees at risk of workplace violence are present.

b. ROLES OF PARTICIPANTS:

- ALL EMPLOYEES shall:

  i. Attend WVPP Training;
  ii. Immediately report any violent, threatening, intimidating, harassing or other disruptive behavior observed or experienced by anyone on agency premises to a supervisor or manager;
  iii. Call 911 for emergency assistance in the case of imminent danger to self or others, or if you are a potential target of physical violence;
  iv. Ensure that you do not act in any way in direct violation of the WVPP.

- ALL SUPERVISORS/MANAGERS shall:

  i. Ensure that each worksite has posted a copy of the WVPP;
  ii. Ensure that each employee has access to a copy of the WVPP;
  iii. Adhere to the provisions of the WVPP;
  iv. Engage in efforts to continuously ensure the safety of employees;
  v. Contact MNHS immediately and complete and submit an incident report form to MNHS within 24 hours of a workplace violence incident or concern;
  vi. Ensure that AERs are notified and have the opportunity to participate in the risk evaluation and determination at each work location.

- AUTHORIZED EMPLOYEE REPRESENTATIVES (AER) shall:

  i. Participate in the annual WVPP review;
  ii. Participate in the risk evaluation and determination of aggregate data and trends and make recommendations;
  iii. Provide recommendations for consideration to the WVPP Coordinator.

- OFFICE OF STATE HUMAN RESOURCES MANAGEMENT (MNHS) shall:

  i. Be responsible for the overall management of the WVPP;
  ii. Be responsible for the investigation of allegations of workplace violence;
  iii. Be responsible for the development of training curricula for the initial and delivery of the refresher training and maintain all training records;
  iv. Provide program review and reporting.

- WVPP COORDINATOR shall:

  i. Ensure all components of the program are in compliance with Article 2, Section 27-b of the NYS Labor Law and 12NYCRR Section 800.6.
  ii. Compile and maintain annual data in accordance with the requirements.

4. PROCEDURAL GUIDELINES

<u>Workplace Violence Prevention Program Requirements</u>:

a. Conduct Risk Evaluations and Determinations

The risk evaluation and determination is intended to assess the presence of potential workplace violence risk factors. Involvement of employees and their union representatives is a critical component of the WVPP and increases the likelihood that all significant risk factors are identified, and that safety measures are feasible and effective.

b. Risk assessments for each work location shall be conducted as follows:

  i. An initial facility risk assessment shall be conducted utilizing the *Fire Safety / Property Maintenance Inspection Checklist* for all Armory locations and the *Consolidated Safety Inspection Checklist* for all Air Base facilities. An initial assessment shall be conducted for any new work location prior to move in or no more than two months after occupancy;
  ii. Analysis of reported risks shall be conducted by reviewing the most current site/location assessment data;
  iii. Following the initial work location risk assessment, any follow-up assessments will be conducted by the MNFE/WVPP Liaison or Air Base/WVPP Liaison as appropriate;
  iv. Investigations will be conducted in response to an employee or union complaint about a risk of workplace violence using the appropriate mechanisms.

c. Reporting Workplace Risk Evaluations and Determinations:

At DMNA Headquarters; Armories; Air Bases; training camps; and other work locations, risk evaluations shall be conducted by the appropriate management and designated employee representative(s). For the purpose of the WVPP, inspection checklists will be reviewed by the MNFE/WVPP Liaison or Air Base/WVPP Liaison as appropriate.

Each workplace risk evaluation shall determine feasible methods and means to address hazards identified in the workplace evaluation, and methods to prevent incidents of workplace violence.

d. Data Review

The WVPP Coordinator will present workplace violence data, including injury and workers' compensation data, and program effectiveness and trends to the Director, State Human Resources (MNHS) and AER at least semiannually.

e. Corrective Action(s)

MNHS shall be responsible for reviewing written reports of workplace conditions that may create a potential danger of violence, possible serious violations of the workplace violence prevention program, and reports of workplace violence incidents and concerns.

If, after a reasonable period of time, the matter has not been resolved and the employee or the employee representative still believes that a serious violation exists, the employee and/or AER may request an inspection of the workplace by written notice to the Commissioner of the New York State Department of Labor.

f. Training

All employees shall receive training on the DMNA Workplace Violence Prevention Program. Such training shall include, at a minimum, a general overview of the DMNA WVPP and each specific worksite assessment outcomes. Annual refresher training will also be provided.

g. Incident Reporting

Any employee or his/ her AER who believes that a serious violation of DMNA's WVPP exists, shall bring such matter to the attention of a supervisor in the form of a written notice and shall afford DMNA a reasonable opportunity to correct such activity, policy or practice.

If an imminent danger exists, the employee must contact the appropriate law enforcement agency immediately and then inform the supervisor.

h. Record Keeping

The WVPP Coordinator shall maintain records of all reports of potential physical environment risk conditions and necessary corrective actions and shall maintain a record of all reports of workplace violence incidents and. concerns.

These records will be maintained per the regulatory requirements.

i. Program Review and Reporting

The WVPP Coordinator shall conduct a review of workplace violence incident(s) and concerns at least annually, to identify any trends in the workplace and a review of the effectiveness of mitigating actions taken. The WVPP Coordinator will follow all reporting procedures as identified in the regulatory requirements.

Additional end analysis may include other data received through other related MNHS Bulletins such as but not limited to Domestic Violence in the Workplace and Reasonable Accommodation/ADA. All confidentiality protocols will be maintained with regard to this data.

5. STEPS IN PROCEDURE

a. Risk Evaluation and Determination Procedure

i. An initial facility risk assessment shall be conducted utilizing the *Fire Safety/Property Maintenance Inspection Checklist* for all Armory locations and the *Consolidated Safety Inspection Checklist* for all Air Base facilities. An initial assessment shall be conducted for any new work location prior to move in or no more than two months after occupancy;

ii. The risk assessment will also include a review of relevant policies and other administrative processes as they may contribute to the risk of workplace violence;

iii. The risk evaluation processes and results shall be discussed by the WVPP, AER and appropriate management representative for each work location. This will ensure appropriate union and management collaboration in the identification of risks and in evaluating potential interventions;

iv. In assessing and reporting on risk factors, the process for consideration of a risk evaluation is as follows:

- Identify each risk.
- Evaluate the risk.
- Suggest an action plan to mitigate/eliminate the risk.
- Identify technical assistance needed to address the risk

v. Where corrective action is warranted, the designated DMNA supervisor and designated employee representative from the specific worksite shall take the necessary steps per agency protocol(s). Serious risk will be immediately evaluated and addressed by the appropriate management representative in the location;

vi. Once the risk evaluation and determination has been completed, a report identifying potential risks and solutions shall be forwarded to the WVPP Coordinator. Management is responsible for the implementation of appropriate recommendation(s). The Workplace Violence Incident Report form will be used to document the outcome of the risk evaluation and determination;

vii. If management and the AER are unable to reach consensus regarding the necessary actions that come from the risk evaluation, concerns will be referred to the Director, MNHS and AER for review. In cases where there is an allegation of a serious violation, the issue will also be brought to the immediate attention of DMNA Legal Directorate;

viii. Copies of all reports, documents, forms, and minutes for each meeting shall be sent to the WVPP Coordinator.

b. Incident/Concern Reporting Procedure

i. Each report of a workplace violence incident or concern shall be completed on the Workplace Violence Incident Report form located on the MNHS website or work location;

ii. When there is the identification of a possible workplace violence concern or an actual workplace violence incident, the following process shall be followed :

- The employee immediately notifies a supervisor of the incident or concern;

Note: When the situation is considered to be of an urgent nature or there is imminent danger, the employee must contact the appropriate law enforcement agency immediately and then inform the supervisor.

- The supervisor assesses the incident or concern and takes appropriate action, up to and including notifying the appropriate law enforcement agency, if not already done by the employee;
- If the incident caused injury to an employee, the supervisor shall assist the employee in obtaining necessary medical care;
- The supervisor immediately notifies the appropriate highest level management staff person who is on duty at the time;
- The employee follows up the verbal report by working with the appropriate supervisor or MNHS to complete the Workplace Violence Incident Report form for submittal to local management and MNHS.
- If there is a privacy concern, the employee shall mark the "*confidential"* check box (the employee's name will be kept confidential).
- Supervisor must complete the required remaining section(s) and forward to the highest appropriate management staff person at the work location and MNHS within 24 hours of the incident or concern. The reporting employee shall receive a copy of the form.
- As appropriate, MNHS Labor Relations will initiate an investigation into the incident.
- The reporting employee can contact the WVPP Coordinator at (518)786-4830 to verify that the report was filed by management within the timeframe indicated.
- If the incident is deemed critical, the management staff person shall follow the departments' guidance on dealing with critical incidents.
- Information will be kept confidential to the extent possible.

c. If, following a referral of such matter to the employee's supervisor and after a reasonable opportunity to correct such activity, policy or practice, the matter has not been resolved and the employee and/or AER still believes that a serious violation of a workplace violence prevention program remains, or that an imminent danger exists, the employee may request an inspection of the worksite by notification to the Commissioner of the New York State Department of Labor.

The notice and request must be in writing, must specifically describe the reason for the request for inspection and must be signed by the employee or his/her union representative. DMNA will not take retaliatory action against any employee because the employee exercises any right accorded him/her by this policy.

6. FORMS IN PROCEDURE

Workplace Violence Incident Report form
Fire Safety / Property Maintenance Inspection Checklist
Consolidated Safety Inspection Checklist

7. RELATED AUTHORITATIVE SOURCES

a. New York State Labor Law Section 27-b

b. Title 12 NYCRR Section 800.6, "Public Employer Workplace Violence Prevention Program"

c. TAG Policy against Violence in the Workplace

d. MNHS Bulletins:

- 2014-04 ADA Reasonable Accommodation Procedure

FOR THE ADJUTANT GENERAL:

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