



March 6, 2015

Bob Nakamura
Senior Safety Engineer
Research and Standards Health Unit
Cal/OSHA
(Sent to bnakamura@dir.ca.gov)

Dear Mr. Nakamura:

Worksafe is pleased to submit comments about the discussion draft of the Health Care Workplace Violence Prevention regulation.

The draft has much in common with violence prevention regulations in other jurisdictions, including those where health care facilities now have a lot of experience dealing with the hazard. However, some aspects are not consistent with the literature and experiences elsewhere.

Our comments are generally arranged according to the sections in the draft proposal. In general, you might find three Canadian regulations helpful. They are the federal one at <http://laws-lois.justice.gc.ca/PDF/SOR-86-304.pdf>, the Manitoba one (which specifically mentions health care) at <http://web2.gov.mb.ca/laws/regs/current/217.06.pdf> and the one from Nova Scotia, found at <http://novascotia.ca/lae/healthandsafety/violenceresources.asp>. There also are a lot of resources at the World Health Organisation (http://www.who.int/violence_injury_prevention/injury/work9/en/).

Application

We want to be sure that all health care workers, wherever they work, are covered by this regulation. That was the intent of Petition 538, which had the broadest coverage. In particular, we recommend that Cal/OSHA ensure that temporary/contract/agency workers and their employers are covered by this regulation. (Temporary employees are mentioned in the requirements for a violence prevention plan, but are not recognised in this section.) Otherwise, this is not comprehensive coverage.

We have some suggestions for language to ensure that agency employers are held responsible. Essentially they should mirror the dual employer regulations for responsibilities, reporting requirements, and training. For example, under reporting requirements, the regulation should say something to the effect that:

“The secondary employer must report all workplace violence incidents affecting employees supervised by the secondary employer, including employees of the primary employer. The secondary employer must inform the primary employer of any workplace violence incidents against any employee supervised by the secondary employer, including employees of the primary employer or other contract employers.”

Definitions

We recommend two important changes in this section. The first is defining violence to cover the full spectrum of possible activities. As we said before the Standards Board, the one used by the World Health Organisation and in the report co-authored by Naomi Swanson of NIOSH (*Workplace violence in the health sector. State of the art*):

The intentional use of power, threatened or actual, against another person or against a group, in work-related circumstances, that either results in or has a high degree of likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.

Alternatively, you could integrate the WHO definition with that used by the federal Canadian regulations about workplace violence prevention, which defines violence as:

any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee.

Second, we believe the phrase “risk factors” should be replaced with “hazard”, except for “patient-related risk factors”. This is more accurate nomenclature, and more consistent with the text of the draft, where you talk about the need to identify and assess hazards.

Third, there seem to be some definitions that aren’t used in the text and other phrases in the text that aren’t defined. There should be consistency by defining words or phrases that are used, and ensuring that only those words or phrases that are used are defined.

We also recommend:

- “alarm” be defined by adding “or action” after vocalization;

- more examples be added to the definition of environmental hazards, beyond collecting money (e.g., working alone or in isolation); and
- “reportable workplace violence incident” be defined more broadly, by removing the phrase “by a patient or person accompanying a patient”.

Workplace violence prevention plan

This type of plan is essential, and commonplace in other jurisdictions with violence prevention regulations. The draft refers to “hazards” and “corrective measures”, which is good. However:

- (c)(2)(A) requires only the names and titles of the people responsible for implementing the plan; it does not require explanation of their responsibilities, one of the elements of an effective health and safety program;
- (E)(2.) is limited to co-workers, former employees, or someone with whom the person has a relationship (which is fine, as it can cover domestic violence spilling into the workplace), but it does not cover other sources of violence;
- (F) assessment procedures could be informed by examples from elsewhere (e.g., see British Columbia’s *Preventing violence in health care. Five steps to an effective program* and *Violence prevention planning Participant’s guide*, Ontario’s *A guide to the development of a workplace violence prevention program*, and the attached health care employer sector document;
- (F) should look at incidents within at least the last three years, not just the most recent year;
- the “such as” examples in (F)(1)(a) should include working alone, while (d) should be outside areas, especially during hours of darkness (parking lots can be dangerous at other times of day), and (3) should include the presence of animals;
- (F)(4) should be changed to read ... to describe the hazards present” (rather than determining the nature of risk factors);
- (H) should cover all types of violence, not just Type 1;
- (I)(1) should refer to supervisors and staff, “trained appropriately always is assigned and available .. or other notification that they are needed”;
- (I)(2) should cover all design issues, which range from physical arrangements to colors to sound and lighting levels;

- (I)(5) should be re-phrased to say “.. a security plan to prevent bringing unauthorized firearms”;
- (I)(8) should include training about what to do in the case of a security threat;
- (J)(2) should include witnesses;
- (J)(3) should read something like “Procedures to provide individual counseling to any employee affected by the incident, at no cost, as for as long as needed.”
- (J)(4) should require post-incident de-briefing for those “involved” and/or affected by an incident;
- (J)(6) should use “evaluate” instead of “review” and after “preventive measures” should read something like .. “(e.g., what happened, if staffing levels are implemented, alarms and other means to request help worked, timeframe and response type were appropriate and sufficient, what may have helped to prevent the incident, injury, or might have impeded effective prevention or interventions)”;
- (J)(8) about the incident log needs to differentiate between a worker’s report of what happened and the supervisor’s recording of the incident, and the two need to be linked (since supervisors should not be interpreting an incident without the workers’ words coming first);
- (K) should require employees and their representatives to participate in the training development and delivery (i.e., replace “may” with “shall”);
- (L) should be an “evaluation”, not a “review”, so that judgments are made about how well the Plan is working, and what needs to be improved, with correction of the problems found coming after the topics to be included in the evaluation; and
- clarify (M), as it doesn’t make sense at the moment.

Workers and their representatives need to be deeply involved in all aspects of the plan. Their participation will ensure the reality of day-to-day experiences and knowledge are integrated into effective prevention of hazards they should not face.

Training

The training language should replicate the best of Cal/OSHA’s regulations, so that sessions are done in language that workers can understand (i.e., their own if necessary, clear/plain for sure). Workers need to leave understanding the hazards, their rights, the processes and procedures to be followed if something happens, and how to deal with any physical changes, tools, equipment or devices provided for their protection. For example, this means

that if there are physical changes to a work space, the implications for workplace violence prevention must be considered and workers must be trained about their significance.

Furthermore, workers have to be trained about how to report incidents in general, not just to law enforcement ((2)(D)).

Within this section the requirements about what training must be done before an initial assignment, and then annually, are very confusion. What are “predicting factors”? What is the “assault cycle”? What are the “characteristics of aggressive and violent patients and victims”? Why “victims”? A much more useful approach is the framework developed in the United Kingdom and described in the attached book chapter.

Sub-section (4) also leaves out a lot. Who are the “non-employee personnel”? When does their training occur? How, by whom, and how often? What kind of participation is possible for worker representatives?

We note that the Safe Patient Handling regulation includes training about a “right to refuse”, for which there should be a parallel in this regulation.

Reporting requirements and record keeping

These requirements should apply to any facility or employer covered by the regulation. The requirements should be preceded something to the effect that “Information to be reported shall include ...”.

We are concerned about confidentiality in reporting, while wanting to ensure that the employer and other involved in prevention activities, as well as unions and worker representatives, get useful information. Therefore we suggest the following:

- “If the worker chooses not to disclose their name, the employer must not enter the employee’s name on the Workplace Violence Incident Report for these cases or if the case falls in one of the following circumstances:
 - an injury or illness to an intimate body part
 - or to the reproductive system,
 - an injury or illness resulting from a sexual assault, a mental illness,
 - other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log.”
- enter “privacy case” in the space normally used for the employee’s name and have employers keep a separate, confidential list of the case numbers and employee names for the establishment’s privacy concern

cases so that the employer can update the cases and provide information to the government if asked to do so, as the Log 300 rules allow;

- follow other requirements of 29 CFR 1904.35 about access to information and reporting; and
- add a sentence that says that even if the case falls under a “privacy concern” case, the employee can select to reveal her name on the Workplace Violence Incident Report form.

Finally, we believe it is important that the Division respond and report what information it gets about the violence incidents in health care settings. Therefore, we recommend that it compile and publish an annual report about reports it receives about violent incidents, investigations, citations and other follow-up. This will enable the Division and those of us outside it to evaluate how well this regulation is working, and provide insights about possible improvements to better protect California’s health care workers.

Please let me know if you have questions. I would be happy to discuss them with you before the next Advisory Committee meeting.

Sincerely

A handwritten signature in cursive script that reads "Dorothy Wigmore".

Dorothy Wigmore, MS
Occupational Health and Green Chemistry Specialist