

December 14, 2018

TO: Kevin Graulich

FROM: California Chamber of Commerce 
California Association of Winegrape Growers
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Framing Contractors Association
California League of Food Producers
California Manufacturers & Technology Association
California New Car Dealers Association
California Retailers Association
California Trucking Association
Construction Employers' Association
Family Business Association
Residential Contractor's Association
Western Agricultural Processors Association
Western Growers
Western Steel Council

SUBJECT: Workplace Violence Prevention Discussion Draft - 10/24/2018 - Comments

The above-signed organizations (the Coalition) submit these comments regarding the referenced discussion draft. The Coalition represents employers large and small across many diverse industries.

This proposed new rule must be considered in the context of the complete scope of the many Cal/OSHA regulatory requirements that employers currently face. Additional requirements should be meaningful, enhance worker safety and be drafted so that employers can comply. Low- and no-risk employers should not be burdened by costly regulations while operating in an environment where they are unnecessary.

While any act of violence in the workplace is abhorrent, the risk of such acts is minimal in many workplaces. Rules should be reserved for situations where they are truly warranted. A reasonable method to assess risk must be applied to determine the extent of regulation.

Of primary concern is the complexity and difficulty presented by attempting to draft one regulation to fit all industries, covering all employers of all sizes with varying exposure to the risk of workplace violence across the state. The reality of the ability of all employers to evaluate and control for all potential scenarios is daunting. Each place of employment presents a unique set of circumstances that may or may not include a realistic risk of workplace violence.

Coalition recommended revisions to the draft

Scope and Application. The proposal to require even workplaces with limited risk to prepare a workplace violence prevention plan as comprehensive as a workplace with high risk is unnecessary. Many businesses maintain limited access to their premises; as a result, those premises are not accessible to customers, clients, patients or other types of visitors and therefore do not face the risk of violence committed by them to employees. Most construction sites and agricultural fields do not anticipate or allow and rarely see outside visitors. Other workplaces have strict access control requirements where visitors cannot enter the workplace without authorization such as in refineries and many manufacturing facilities. For example, many mining and mineral processing operations strictly control access. One company has one point of entry with third party security. This is where all the employees, contractors, and visitors check in. Visitors and Contractors are only allowed on site if a Site Access Form is completed by the company that operates the site and it is submitted to Security prior to arrival. Visitors are not allowed on site if they do not have clear written access approval and a point of contact. These types of workplaces have little or no risk associated

with Type 1 or 2 violence as described in section (c) Definitions. Therefore, a limited workplace violence prevention plan should suffice and be part of the Injury and Illness Prevention Program, or when applicable, in the Crisis Management Plan.

In order to limit unnecessary and burdensome regulations on small employers and workplaces with little to no exposure to risk, the Coalition suggests the following exemption be included:

EXCEPTION 5: Workplaces with limited exposure to Type 1 and Type 2 Violence may satisfy the requirements of this section by including appropriate and practicable workplace violence prevention as part of the Injury& Illness Prevention Program, or when applicable, as part of a Crisis Management Plan, including training, to prevent Type 3 and Type 4 Violence exposures.

(b) Definitions. All terms used in the draft that require employer compliance should be defined in regulation.

Workplace violence hazards is undefined. The Coalition suggests a definition be added for workplace violence hazards. The draft requires employers to identify, evaluate and correct these risks. This definition should be imported from and revised in section (d) Training, where it is not framed as a definition, but makes an assumption that its description applies. The Coalition proposed language is:

“Workplace violence hazards” are workplace violence risks that employees are reasonably anticipated to encounter in their ~~jobs~~-workplace.

Referencing workplace violence hazards encountered on the job rather than in the workplace could lead to any number of redundant assessments of various jobs performed in the same workplace. Instead, the Coalition recommends that the risks anticipated should be associated with the workplace, consistent with the other elements of the Plan, and even in the name of the regulation – Workplace Violence Prevention.

The definition of “Threat of violence” is overly broad and vague. The Coalition suggests the definition be consistent with California Code of Civil Procedure which governs employees that have suffered violence in the workplace.

Title 7, section 527.8 (b) (2) “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, that serves no legitimate purpose.

Consistent with the Code of Civil Procedure, the Coalition suggests the following definition:

“Threat of violence” means a knowing or willful statement or conduct that would place a reasonable person in fear for their safety because there is a reasonable possibility the person might be physically injured, and that serves no legitimate purpose.

(c) Workplace Violence Prevention Plan

(2) Revise employee involvement. Employers are responsible for providing a safe workplace including the development of all required safety plans. Responsible employers will include appropriate policies and procedures to protect employees on the job. A mandate for employees and their representatives to develop policy for employers is overly intrusive and dilutes the employer’s authority to fulfill the responsibility. While employees in many instances have good ideas to contribute, employers remain the responsible party in implementing compliant rules.

We recommend limited employee input be provided for through consultation with the employer on identifying and evaluating hazards. Employers should maintain the exclusive responsibility for implementing the program as well as training, and reporting and investigating incidents. Employee involvement in reporting and investigations would compromise confidentiality as well as potentially impede the employer’s ability to properly complete an investigation. Also, the Division should acknowledge that many employers, particularly small employers without the in-house expertise to develop a plan, will utilize consultants or

vendors to provide a plan. We would also anticipate that the Division will develop model plans particularly for small employers to use as a template. These models allow for appropriate input from employees yet provide employers with effective solutions to developing and maintaining a plan.

Employers should not be compelled to allow employees to dictate company policy. The Coalition suggests employers develop the Plan in consultation with employees rather than “obtain the active involvement of” – a concept that is consistent with Process Safety Management rules, 8 CCR 5189.1(q), as follows:

(2) Effective procedures to ~~obtain the active involvement of~~ establish **consultation with** employees and their **union** representatives, **if any**, in developing and implementing the Plan, including their ~~participation in~~ **consultation regarding** identifying, evaluating, and correcting workplace violence hazards. ~~designing and implementing training, and reporting and investigating workplace violence incidents.~~

Coordination with other employers. This provision is too broad, and redundant of existing requirements regarding multi-employer workplaces. Multi-employer workplace rules are very clear as to the responsibilities of each employer where more than one employer has workers in the same workplace. Therefore, this provision is unnecessary and should be deleted as it will only serve to create confusion between the two provisions. Other Cal/OSHA regulations do not specifically call out the handling of multi-employer worksites which could therefore call into question the requirement for other rules.

Subsection (B) applies to dual-employer relationships. The proposal does not provide a definition of dual employer relationships which creates confusion for employers. Once a clear definition is provided, the Coalition will be able to analyze the requirements.

(d) Violent Incident Log.

The required data points for this log are overly detailed and burdensome for most employers while not providing benefit for most employers. The Coalition recommends a minimum standard of recordability as well as limiting the requirement to high hazard workplaces where a benefit from such record keeping can be realized. For example, the Special Report provided at the Advisory Committee in January 2017 may provide some insight that could be used to determine a threshold for maintaining such a log. Additionally, the heat illness prevention standard (Title 8, section 3395) also provides a model in that limited industries are required to comply with high heat provisions. The Coalition would welcome the opportunity to further explore this model with the Division and stakeholders.

(c) Training

The Coalition recommends that employers be permitted to use online training as is allowed in section 3342:

Training not given in person shall fulfill all the subject matter requirements of subsections (1) through (3) and shall provide for interactive questions to be answered within one business day by a person knowledgeable about the employer’s workplace violence prevention plan.

(e) Recordkeeping.

Recordkeeping requirements should be the same as those required by the IIPP. We are concerned that creating varying recordkeeping requirements for various programs will create confusion for employers, particularly when no necessity to exceed IIPP requirements has been demonstrated. The Coalition opposes the release of training records as intrusive and burdensome on the employer to provide and does not contribute to worker safety. We suggest the following revisions to the draft language:

(3) Records of workplace violence ~~incident injury~~ investigations conducted pursuant to subsection (c)(40) ~~(11)~~ shall be maintained for a minimum of ~~five~~ **one** years. These records shall not contain

“medical information” as defined by Civil Code Section 56.05(j).

(4) All records required by this subsection shall be made available to the Chief on request, for examination and copying. **Employer workplace violence records shall be held in the strictest confidence by the state agency and shall not be subject to Public Records Act requests.**

(5) All records required by ~~this~~ subsections (f)(1), (f)(2), and (f)(3) shall be made available to employees and their **union** representatives, **if any**, on request, for examination and copying within 15 calendar days of a request in accordance with title 8, section 3204(e)(1) of these orders.

Conclusion

The Coalition is concerned that the discussion draft as proposed is unnecessarily broad and burdensome. We have proposed revisions that would create a rule that employers would more likely be able to comply with and would be enforceable. We continue to maintain that low-risk industries should not be subject to the same requirements as high-risk industries.

Furthermore, we would anticipate that the division will develop extensive guidance, fact sheets, answer to frequently asked questions as well as model programs in order to facilitate compliance and to ease complexity and confusion.

Further discussion and any questions may be directed to Marti Fisher at the California Chamber of Commerce.

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