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December 14, 2018

Kevin Graulich
Senior Safety Engineer
DOSH Research & Standard Health Unit
495-2424 Arden Way
Sacramento, CA 95825

Sent Via Email

Re: Workplace Violence Prevention Standards - General Industry

Dear Mr. Graulich:

On behalf of the California Employment Lawyers Association ("CELA"), thank you for the opportunity to provide comments on the workplace violence prevention (WVP) standard for general industry.

CELA is a nonprofit mutual benefit corporation under Internal Revenue Code Section 501(c)(6), with a volunteer board and just under 1,200 members. CELA is the largest and strongest statewide organization of private attorneys who practice primarily employment law on behalf of workers. CELA's mission is to help our members protect and expand the legal rights of working women and men through litigation, education and advocacy.

We thank the Advisory Committee for incorporating language into the current draft to address multi and dual employer settings. This language is important because it provides clear guidance to multi and dual employers on their responsibilities to address workplace violence.

Currently, an employer has a general duty to provide a healthy and safe work environment. This is a duty that they cannot delegate to another subcontractor. This only provides guidance, however, with respect to workplace violence. A WVP prevention standard is necessary because it provides prescriptive and clear language on the employer's legal responsibilities with respect to WVP. This is necessary to ensure employer compliance and that workers understand who is responsible for implementing a workplace violence prevention plan in the workplace. This is particularly important given the increase and rise of the fissured economy model and contingent/temp employees.

We are pleased to see the inclusion of anti-retaliation language for reporting workplace violence to an employer. For many workers, but especially, low-wage and immigrant workers, the fear of losing one's job, demotion or loss of hours is a huge deterrent to reporting workplace violence. In some workplaces workers have faced continued harassment

and violent behavior, targeted towards themselves and/or their loved ones after they have complained of workplace violence. Explicitly including an anti-retaliation provision is important and necessary to ensure workplaces are free of retaliation.

We thank the Advisory Committee for including active shooter language within the standard. Sadly, California has seen several workplace shootings, with three occurring right around the time the last draft comments were issued. The diversity of these workplaces, YouTube's San Bruno campus, The Oaks mall in Thousand Oaks, and a law firm in Long Beach, demonstrate the fact that workplace violence can occur anywhere. It illustrates a clear need for protective workplace protocols regardless of type of industry/place of employment.

Lastly, we are extremely pleased to see the inclusion of the violent incident log in this current draft. Requiring employers to keep a log and investigation records allows the employer to have a central location to track workplace violence and violence indicators instead of in personnel files where they may get lost or are hard to monitor. Moreover, requiring employers to record all incidents in the log and not only recordable injuries ensures that a broader scope of conduct will be covered, thus resulting in more workers receiving protection under this standard. This is of particular importance and priority for workers in the field of education as they are currently exempt from maintaining records of any injuries for the Log 300.

While we appreciate all of the work that has gone into developing this standard, we believe the following key changes are needed to protect workers:

I. <u>"Workplace Violence" and "Threat of Violence"</u>

The current draft's definition of "workplace violence" is too narrow. The definition should unambiguously cover all incidents within the scope of work. We want to ensure workers without a fixed "work site" or who are away from their work site as part of their job (at a hotel or in employer providing transportation/lodging, for example) are covered. The definition should include conduct that are predictors of sexual violence. Stalking has been identified as the most prevalent form of abuse at work. Other jurisdictions have used language to ensure there is no ambiguity about the inclusion of stalking in the definition of workplace violence, and we urge you to adopt comparable language.

The definition of "threat of violence," a sub-part of the definition of "workplace violence," should also be broad. A broad definition is needed to ensure predictors of violent behavior and violent behavior itself, regardless of whether an injury results are covered. This is particularly important for the purposes of recordkeeping and flagging predictive violent behavior.

Please see comments submitted by Worksafe dated December 14, 2018 for suggested language for both definitions.

II. <u>Injury</u>

The narrow scope of the rule's definition of injury as "*injuries reportable under the Log 300"* is problematic because the word "injury" is presented in such a way as to have the end effect of serving as the only way to evaluate the effectiveness of the plan. That is, a review of the WVP

plan's effectiveness will only occur after a recordable injury takes place. Alternatively, plan review can occur "periodically." Both definitions do not provide a sufficient evaluative process.

Although periodic reviews of the plan's effectiveness is important, such reviews should not be limited to "periodic reviews or post injury." This is especially problematic since the review as stated is limited to those incidents that count as an "injury" as listed in Title 8, Section 14300.7(b)(1) (injuries reportable under Log 300). Thus, we recommend removing the term "injury" from the definitions section and requiring an evaluation of an employer's effectiveness after any incident of workplace violence.

III. Environmental Risk Factors Assessment and Engineering and Workplace Practice Control Measures in the Workplace Violence Prevention Plan

Unlike the recently adopted WVP standard in health care (and contrary to basic health and safety principles), the proposal for general industry WVP does not include an employers' responsibility to identify environmental risk factors and incorporate the proper engineering and workplace practice controls to address such risks.

The definitions in the WVP in health care standard provide examples of the types of controls employers should adopt. The general WVP standard should include similar definitions and examples, and require appropriate controls based on a hazard assessment that includes environmental risk factors assessment.

IV. Representative

Finally, although the current draft includes "union representative," the definition of and title of representative should be one that permits employees to elect a representative even where there is no collective bargaining agent. Worker-designated representatives play a key role in increasing safety and health in California's workplaces. Their role is especially important when workers are disempowered and not protected by a union. We recommend as an example the definition of representative used in the federal Mine Safety and Health Act.

Thank you for your consideration of these comments.

Respectfully submitted,

MARIKO YOSHIHARA
CELA Policy Director and Legislative Counsel