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December 14, 2018

Kevin Graulich  
Senior Safety Engineer  
Cal/OSHA- Research and Standards Occupational Health Unit

*Via email: kgraulich@dir.ca.gov*

Dear Mr. Graulich:

We appreciate all the hard work that Division staff have put into development of the Workplace Violence Prevention Standard for General Industry. We strongly support the additions of regulatory language to address multiemployer and dual employer responsibilities; protection from retaliation for reporting threats and incidents of violence to an employer; active shooter preparedness requirements; and employer requirement to maintain a log of workplace violence incidents. Logging and investigation of all threats and incidents is crucial for identifying hazards, needed controls and training needs to prevent future incidents and injuries. A log is vital for identifying troubling patterns so they can be addressed before they escalate into a tragic incident.

We note with great concern that 21% of fatal work injuries were caused by assaults and violent acts in California between 2013-2016. Only transportation incidents caused more fatalities. A strong and comprehensive regulation is urgently needed to address the pervasive problem of workplace violence.

We recommend the following changes to further strengthen and improve the clarity of the proposal:

## **3343 (b) Definitions**

For comprehensiveness, the added definition "Union representative" should be broadened to "Designated representative" as follows:

"Designated Representative" means any individual or organization to whom an employee gives written authorization to exercise such employee's right under this standard. Where there is a Union representative, a recognized or certified collective bargaining agent, that individual shall be treated automatically as a designated employee representative without regard to written employee authorization.

A broader definition of representative is needed because while the 3343(c)(2) as proposed requires effective procedures to obtain involvement of employees and their union representatives in development of violence prevention plans, in contrast, section 3343(f)(6) specifies appropriately that records shall be made available to employees or their representatives upon request, without limiting this right to union representatives. It is very important that workers who are not covered by a collective bargaining agreement are allowed to designate representatives for the

purpose of requesting records because injury or other obstacles may prevent them from requesting records themselves.

We also recommend that the definition of “threat of violence” be broadened so it is not dependent on risk of physical injury. This is important both because psychological trauma and stress harm workers and because threats that do not initially result in physical injury can escalate if they are not addressed. We recommend the following change:

“Threat of violence” means a statement or conduct that has a reasonable possibility of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury; that causes a person to fear for his or her safety because there is a reasonable possibility the person might be physically injured; and that serves no legitimate purpose.”

In addition, while we support the use of “place of employment” instead of “worksite”, the definition of “Workplace violence” should include violence occurring on employer arranged or provided transportation and should be expanded to include any act of violence or threat of violence from supervisors or managers at employer provided housing. Farmworkers have reported threats and incidents of violence experienced both on employer arranged transportation and in employer provided housing. For comprehensiveness, the definition should also include stalking.

We recommend making the following changes to the definition:

“Workplace violence” means any act of violence or threat of violence that occurs at the place of employment or while using employer supplied or arranged transportation or any threat of violence by a supervisor that occurs at employer supplied housing. . . .

. . . .

(C) Stalking an employee that results in, or has a likelihood of resulting in material harm to the physical safety and health of such employee when such stalking occurs during the course of employment.

### **3343 (c) Workplace Violence Prevention Plan**

We strongly agree that the written plan should be available to employees at all times. In addition, a copy of the plan should be provided to any employee or their designated representative upon request, without charge, so they will be able to review it in more detail on their own time.

We strongly support the revised text in (c)(3) requiring multi-employer coordination to ensure that all workers receive training and revision to (c)(6)(A) which clearly requires that employers adopt procedures for employees to report violent incidents or threats without fear of reprisal.

Workers are understandably often very uncomfortable about reporting threats or incidents of violence, especially sexual violence, so we recommend specifying that employers must have procedures for accepting reports in a manner that does not discourage reporting. Section (c)(4) should also specify that a person who is not an employee’s direct supervisor should be designated to receive reports of workplace violence concerns, threats or incidents. This is very

important in agriculture where Type 3 violence perpetrated by supervisors is the most common form of violence and can include sexual violence, retaliatory or disciplinary violence. The regulation should also specify that an employee who reports an incident to local law enforcement is protected from retaliation. We suggest the following language:

(c)(4) Effective procedures for the employer to accept and respond to reports of workplace violence in a manner that does not discourage reporting, including designating a person who is not the employee's direct supervisor to receive reports of Type 3 violence and to prohibit retaliation against an employee who makes such a report to the employer or local law enforcement agency.

Section (c)(6)(A) Procedures for communicating how an employee can report a violent incident, threat or concern should include a requirement for a written form for recording workplace violence incidents created by Cal-OSHA that states an employee's right to make a police report about the incident and provides employees with contact information for law enforcement agencies. The regulation should specify that the employer provides this form at the time of hire and/or during workplace violence prevention training and to any employee who is a victim of workplace violence. The form should be provided in a language the worker understands or with translation service, including phone translation service if needed to help fill in the report. A worker who files a report should be provided a copy of the completed report.

A subsection (c)(6)(D) should be added to specify how an employee can report a violent incident or threat to local law enforcement or emergency services without fear of retaliation.

To better prevent violent incidents, subsection (c)(9) should be amended to require evaluation of workplace environmental risk factors as well as workplace violence hazards.

To be effective, a workplace violence prevention plan should also identify the controls employers will implement to help prevent or reduce the risk of workplace violence and timelines for correcting imminent and serious hazards. These requirements are included in the health care violence prevention standard section 3342(c)(11). Basic language such as the language in the WPV prevention in health care standard should be included.

Therefore, we recommend adding the following language from the health care violence prevention standard:

(c)(9) Procedures to correct workplace violence hazards in a timely manner in accordance with title 8, section 3203 (a)(6). Engineering and work practice controls shall be used to eliminate or minimize employee exposure to the identified hazards to the extent feasible. The employer shall take measures to protect employees from imminent hazards immediately, and shall take measures to protect employees from identified serious hazards within seven days of the discovery of the hazard, where there is a realistic possibility that death or serious physical harm could result from the hazard. When an identified corrective measure cannot be implemented within this timeframe, the employer shall take interim measures to abate the imminent or serious nature of the hazard while completing the permanent control measures.

### **3343(d) Violent Incident Log**

As detailed above, we strongly support the addition of this requirement. The log should be required to be reviewed at least annually, rather than periodically.

### **3343(e) Training**

We strongly support the proposed requirement that training material appropriate in content and vocabulary to the educational level, literacy, and language of employees shall be used.

To supplement initial training we recommend that section (e)(1) should require periodic refresher training. In addition, we support the addition to (e)(2) that requires training specific to employees jobs but think the section should be expanded to require training in how to make a report to DFEH or local law enforcement and required training materials should include a list of resources for victims of violence.

A section (e)(4) should be added specifies that trainers must be knowledgeable in the subject matter and not have any record of perpetrating violence, including sexual harassment.

### **3343(f) Recordkeeping**

In Section 3343(f)(6) we strongly support the addition of the requirement that records be made available within 15 calendar days of a request.. In the same subsection, the definition of union representative should be amended to clarify that any employee or designated employee representative is entitled to access to records required by (f)(1), (f)(2), (f)(3) on request for examination and that a single copy of any record be provided without charge. This change is necessary because it is unreasonable to ask workers to make arrangements to bring in equipment to make their own copies.

(f)(6) All records required by this subsection shall be made available to employees and their representatives, on request for examination and a single copy of any record must be provided free of charge. If the employee or their representative agrees to receive the record electronically, the employer may provide the record electronically.

We appreciate all the work that is going into developing this standard. Please contact me if you have any follow-up questions.

Sincerely,



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