



December 14, 2018

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

Sent Via Email to: KGraulich@dir.ca.gov

RE: Draft Revisions to Workplace Violence Prevention Standard - General Industry

Dear Mr. Graulich:

On behalf of Equal Rights Advocates, I write to offer comments on the draft revisions to the Workplace Violence Prevention (WVP) standard for general industry.

Founded in 1974, Equal Rights Advocates (ERA) is a non-profit civil rights organization that works to protect and expand economic and educational access and opportunities for women and girls. For over 40 years, ERA has represented women who have experienced discrimination and marginalization on the basis of their gender, their race and income level, including in cases related to workplace violence such as sexual assault. We know first-hand the challenges that low-wage and immigrant workers from historically marginalized industries face, especially with regard to fears of retaliation for reporting unsafe and/or unlawful working conditions, and we have actively advocated for more proactive approaches to reducing workplace sexual assault and other types of violence. Specifically, ERA convened the Ya Basta Coalition, a cross sector coalition working together to combat sexual harassment and violence in the janitorial industry.

We appreciate your consideration and inclusion of much of our recommended language from the written and oral comments previously submitted. We are particularly encouraged by the inclusion of suggested language in the following areas:

- multiemployer and dual employer responsibilities;
- anti-retaliation for reporting violence to an employer;
- active shooter requirements within the plan; and
- employer requirement to maintain a workplace violence log

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.¹ This only provides guidance, however, with respect to

¹ Lab. Code § 6400; *Labor Ready, Inc.*, Cal/OSHA App. 99-3350, DAR (May 11, 2001); *Kelly Services*, Cal/OSHA App. 06-1024, DAR (June 15, 2011); *See also* AB 1897 providing that the client employer (secondary employer) cannot shift

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 a job, demotion or loss of hours is a huge deterrent to reporting workplace violence. In some workplaces workers have faced continued harassment and violent indicative 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.² 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. Definitions

A. "Workplace Violence" and "Threat of Violence" Definitions

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.³ Other jurisdictions have used language to ensure there is no ambiguity about the inclusion of stalking in the

responsibility or liability to the staffing agency, Lab. Code § 2810.3(b)(2) & (C); *Staffchex*, Cal/OSHA App. 10-2456-2458, DAR (August 28, 2014) ("Staffchex").

²Hill, *California has seen several workplace shooting in last several years*, Sacramento Bee (April 3, 2018) <<https://www.sacbee.com/news/nation-world/national/article207850729.html>> (as of Dec. 9, 2018).

³Reeves, C.A., & O'Leary-Kelly, A (2009), *A Study of the Effects of Intimate Partner Violence on the Workplace*. University of Arkansas, Fayetteville, AR.

definition of workplace violence, and we urge you to adopt comparable language.⁴

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. Injury

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.⁵ 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.⁶

⁴ See, e.g., Public Employer Workplace Violence Prevention Programs, 12 NYCRR PART 800.6.

⁵ Cal. Code of Regs., Tit. 8 § 3342 (b).

⁶ 30 C.F.R. 40.

We appreciate the opportunity to provide these comments. If you have any additional questions, please do not hesitate to contact me at (415) 575-2394, or jstender@equalrights.org.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Stender".

Jessica Stender
Senior Counsel, Workplace Justice & Public Policy
Equal Rights Advocates