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*Via Email to [KGraulich@dir.ca.gov](mailto:KGraulich@dir.ca.gov)*

December 14, 2018

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

Re: Workplace Violence Prevention Standard in General Industry

Dear Mr. Graulich and Members of the Advisory Committee,

First, we would like to convey our appreciation to the Advisory Committee for the opportunity to comment on the draft workplace violence prevention (WVP) standard for general industry.

We are Legal Aid at Work (formerly Legal Aid Society-Employment Law Center). For more than 100 years, we have advocated on behalf of low-wage workers through direct legal services, impact litigation, and policy. We strive to ensure that all people—regardless of race, national origin, immigration status, gender identity, sexual orientation, disability, religion, or survivor status—have access to workplaces that are just, equitable, and safe. Having an effective and comprehensive WVP standard is critically important to our clients. The low-wage workers and immigrant workers we serve are often too afraid to report workplace violence, fearing that they will lose the income they so desperately need or will even face deportation. Through our Project SURVIVE program, we work with survivors of domestic violence, sexual assault, and stalking; such violence often extends to survivors' workplaces. An effective WVP standard will help protect survivors while they are at work and reduce the likelihood that survivors will be forced to choose between their job and their safety.

We greatly appreciate that the current draft incorporates language and changes previously recommended by community partners on certain key issues.

Retaliation is chief among these key issues. We are very encouraged by the inclusion of clear anti-retaliation language for workers who report workplace violence. For many workers, but especially low-wage and immigrant workers, the fear of being fired or losing hours serves as a huge deterrent to reporting workplace violence. In addition to fearing economic harm, workers also fear worsened harassment and violent behavior if they come forward. An explicit anti-retaliation provision is critically important for helping workers feel comfortable reporting workplace violence.

Another key issue involves the responsibilities of multi and dual employers. The current draft's language provides much-needed guidance to multi and dual employers on their responsibilities to address and prevent workplace violence. This is necessary to ensure employer compliance and so that workers understand who is responsible for implementing a WVP plan. Given the prevalence of temp/contingent employees and the rise of the fissured economy model, this language is especially crucial.

Workplace shootings are another key area of concern, and we thank the Advisory Committee for including active shooter language within the standard. California has unfortunately seen several recent workplace shootings, ranging from YouTube's San Bruno campus to The Oaks mall in Thousand Oaks. These shootings demonstrate the risk faced by all workers and the need for protective workplace protocols, regardless of type of industry or place of employment.

Finally, we are encouraged by the inclusion of the violent incident log requirement in the current draft. Requiring employers to keep a log creates a central location where employers can more easily track workplace violence and indicators of violence. This is far preferable to keeping such information in personnel files, which may not exist at all or may get lost, and are difficult to monitor. Additionally, requiring employers to record all incidents—not just injuries—in the log will result in greater protection for workers. This requirement is especially important for workers in the education field, as employers in this field are currently exempt from maintaining records of any injuries for the Log 300.

Although we are grateful to the Advisory Committee and all stakeholders for their hard work in drafting the current language, there are several changes desperately needed in order to effectively protect workers:

### **I. “Workplace Violence” and “Threat of Violence” Definitions**

The current draft’s definition of “workplace violence” is too narrow and does not adequately protect survivors of stalking, domestic violence, and sexual violence.

First, the definition should include stalking and other conduct known to be a predictor of sexual violence. Stalking has been identified as the most prevalent form of abuse at work.<sup>1</sup> We frequently see clients through our Project SURVIVE program who have endured workplace stalking, many of whom have been forced to leave their jobs out of fear for their safety. Other jurisdictions have used language to ensure there is no ambiguity about the inclusion of stalking in the definition of workplace violence, and we strongly urge you to adopt comparable language.<sup>2</sup>

Additionally, the “workplace violence” definition should unambiguously cover all incidents within the scope of work. It is crucial that this standard covers workers without a fixed “work site,” as well as those who are away from their work site as part of their job, such as workers in employer-provided transportation or lodging.

The definition of “threat of violence,” a sub-part of the definition of “workplace violence,” is insufficient to effectively protect workers. A broad definition is needed in order to cover both predictors of violent behavior and violent behavior itself, regardless of whether an injury results. This is particularly important for recordkeeping and flagging behavior known to predict future violence.

We strongly encourage the Advisory Committee to adopt the suggested language submitted by Worksafe on December 14, 2018 for both definitions.

### **II. “Injury” and Reviews of WVP Plan Effectiveness**

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<sup>1</sup> Reeves, C.A., & O’Leary-Kelly, A (2009), A Study of the Effects of Intimate Partner Violence on the Workplace. University of Arkansas, Fayetteville, AR.

<sup>2</sup> See, e.g., Public Employer Workplace Violence Prevention Programs, 12 NYCRR PART 800.6.

Periodically reviewing a WVP plan's effectiveness is an important step toward a safer workplace. Under the current draft, however, an adequate evaluative process is unlikely. The current language limits reviews of a plan's effectiveness to "post injury" or "periodic reviews." But because the rule narrowly defines "injury" as injuries reportable under Log 300, it is likely that a review of a WVP plan's effectiveness will only take place after a recordable injury occurs. We recommend instead requiring an evaluation of a WVP plan's effectiveness after any incident of workplace violence and deleting the term "injury" from the definitions section.

### **III. The Inclusion of an Environmental Risk Factors Assessment and Engineering and Workplace Practice Control Measures**

The proposed standard 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 as part of their WVP plan. This omission is contrary to basic health and safety principles.

The recently-adopted WVP standard for health care includes such obligations. The definitions in the health care WVP standard provide a model for the types of controls employers should adopt.<sup>3</sup> We encourage the Advisory Committee to amend the general industry WVP standard to include similar definitions and examples, and to require appropriate controls based on a hazard assessment that includes an evaluation of environmental risk factors.

### **IV. Employees' Representative**

Employees should be permitted to designate a representative even in the absence of a collective bargaining agent; the current draft only allows for a "union representative." But the need for worker-designated representatives is only heightened in those workplaces where employees lack the protection of a union. We urge the Advisory Committee to include a non-union representative option, and encourage the Committee to use the definition of "representative" in the federal Mine Safety and Health Act<sup>4</sup> as a model.

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<sup>3</sup> Cal. Code of Regs., Tit. 8 § 3342 (b).

<sup>4</sup> 30 C.F.R. Part 40.

We thank the Advisory Committee for considering our comments and for their hard work in developing this standard.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Bixby". The signature is written in a cursive, flowing style.

Lisa Bixby  
Skadden Fellow  
Legal Aid at Work