



**California
Nurses
Association**



**National
Nurses
United**

OUR PATIENTS. OUR UNION. OUR VOICE.

OAKLAND
155 Grand Avenue
Suite 100
Oakland CA 94612
phone: 800-287-5021
fax: 510-663-1625

SACRAMENTO
Government Relations
980 9th Street
Suite 700
Sacramento CA 95814
phone: 916-446-5019
fax: 916-446-3880

July 18, 2022

Kevin Graulich, Senior Safety Engineer
Research and Standards Occupational Health Unit
Division of Occupational Safety and Health
California Department of Industrial Relations
VIA EMAIL: kgraulich@dir.ca.gov

RE: Workplace Violence Prevention in General Industry Discussion Draft - May 17, 2022

Dear Mr. Graulich;

The California Nurses Association/National Nurses United (CNA/NNU), representing more than 100,000 registered nurses in California, appreciates the opportunity to comment on the Workplace Violence Prevention in General Industry draft as revised May 17, 2022. CNA/NNU is the largest labor union and professional association of registered nurses in the state and in the nation, and we are therefore concerned that our members are afforded their right to a safe and healthy workplace and are fully protected by their employers from hazardous exposures that may occur in the course of providing care to patients, including workplace violence (WPV).

As noted in more detail below, we appreciate that Cal/OSHA has addressed several concerns raised in our previous comments, dated December 14, 2018.¹ However, the draft standard still does not contain all elements necessary for effective prevention of workplace violence and protection of employees. A comprehensive standard that mandates employer prevention plans is needed to protect workers from increasing levels of workplace violence.

¹ California Nurses Association/National Nurses United comments submitted to Cal/OSHA December 14, 2018. Posted at <https://www.dir.ca.gov/dosh/doshreg/Workplace-Violence-in-General-Industry/Comments-2/CNA-NNU.pdf>.

As stated in our December 14, 2018, comments as well as our comments in response to the first discussion draft and advisory meeting,² CNA/NNU strongly encourages Cal/OSHA to use the Workplace Violence Prevention in Healthcare Standard (8 CCR §3342, “CA Healthcare WPV Standard”) as the model for drafting the CA General Industry WPV Standard. Although Cal/OSHA has previously stated that this is their intent, there are still significant elements missing from the current discussion draft. Given the high frequency of workplace violence incidents,³ CNA/NNU believes that it is critical that Cal/OSHA create a strong standard to require employers to protect employees from workplace violence.

The following comments include a number of issues detailed in our December 14, 2018, written comments that unfortunately remain in the current draft as well as new comments on revisions made in the May 17, 2022, third discussion draft. For ease of use and to ensure all of our comments on outstanding issues are compiled in one place, we are including both in these written comments.

§3343(a) SCOPE AND APPLICATION

- **Cal/OSHA Has and Should Continue to Maintain a Protective Scope**

Consistent with our previous comments, CNA/NNU continues to support the expansive scope included in Cal/OSHA's third discussion draft. We commend Cal/OSHA for recognizing that all workers in California need protections from workplace violence and for maintaining an expansive scope. As discussed in our earlier comments, many CNA/NNU members would be covered under the CA General Industry WPV Standard. These members include nurses and other healthcare workers at outpatient clinics that are not covered by the CA Healthcare WPV Standard as well as

² California Nurses Association/National Nurses United comments submitted to Cal/OSHA March 29, 2018. Posted at <https://www.dir.ca.gov/dosh/doshreg/Workplace-Violence-in-General-Industry/comments/california-nurses-association.pdf>.

³ The Occupational Safety and Health Administration notes on its Workplace Violence webpage, “Acts of violence and other injuries is currently the third-leading cause of fatal occupational injuries in the United States. According to the Bureau of Labor Statistics Census of Fatal Occupational Injuries (CFOI), of the 5,333 fatal workplace injuries that occurred in the United States in 2019, 761 were cases of intentional injury by another person.” See <https://www.osha.gov/workplace-violence>.

nurses who work in telephone advice centers or call centers to provide medical advice and assistance to patients over the telephone. We strongly support Cal/OSHA's decision to maintain the general industry scope and to not adopt a two-tiered or "high hazard" approach.

§3343(b) DEFINITIONS

- **§3343(b)(1): Confusing Definition of "Injury" Should Be Removed**

As we noted in our prior comments submitted December 14, 2018, the first discussion draft required employers to investigate and record only those workplace violence incidents that resulted in an injury meeting the 300 log recording requirements. Cal/OSHA importantly changed this threshold in the second discussion draft, such that all workplace violence incidents must be investigated and information about each incident recorded in a Violent Incident Log. CNA/NNU strongly supports this change which is retained in the third discussion draft. With this change, however, inclusion of the definition of injury in subsection (b) is unnecessary and potentially confusing as it is no longer a salient part of the standard.

- **§3343(b)(2): CNA/NNU Supports Deletion of "Physically" From Definition of "Threat of Violence"**

In the third discussion draft, Cal/OSHA deleted the term "physically" from the definition of "threat of violence" so that a statement or conduct that causes a person to fear for their safety because there is a reasonable possibility that the person might be injured would be covered by the standard. This is important because, if not addressed, threats that do not initially result in physical injury could escalate. Employers will not be able to effectively prevent violence if they are not paying attention to threats and near misses.

- **§3343(b)(2): Replacing the Term "Union Representative" with "Authorized Representative"**

CNA/NNU understands the limiting nature of the previous discussion draft's use of the term "union representative" and that it would fail to provide certain protections to workers who are not covered by a collective bargaining agreement. The third discussion draft addresses this issue by deleting "union representative" and replacing it with "authorized representative" under §3343(c). CNA/NNU has concerns regarding the term "authorized," because it is not clear in the draft who must "authorize" the representative. We would suggest that the language be revised to state "employees and their representatives" which is consistent with the CA Healthcare WPV Standard.

Alternatively, we also understand that other worker advocates have previously suggested adding a definition of "designated representative" to read: *"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.* CNA/NNU would be supportive of such a definition.

- **§3343(b)(3)(C)2: Definition of "Type 2 Violence" Should Be Made Consistent with the Healthcare WPV Standard**

The third discussion draft includes a definition of "Type 2 violence" which deviates from the definition of that term in the CA Healthcare WPV Standard. Specifically, the phrase "or other individuals accompanying a patient" has been deleted from the definition of "Type 2 violence" in the third discussion draft. CNA/NNU recommends that phrase be included here in order to cover instances where the violent conduct is committed in a clinic setting by someone accompanying a patient.

- **Additional Detailed Definitions Still Needed**

As noted in our prior comments, more detailed and descriptive definitions are needed in the CA General Industry WPV Standard. We previously suggested that definitions from the CA Healthcare WPV Standard be used. Definitions are an important element of any standard because they specify what terms mean, which is important for

establishing and defending any citation of a standard. CNA/NNU requests that Cal/OSHA add the following definitions from the CA Healthcare WPV Standard:

- Emergency
 - Engineering controls
 - Environmental risk factors
 - Patient-specific risk factors (possibly changed to person-specific risk factors to be more applicable to general industry)
 - Work practice controls
- **§3343(b) EXCEPTION: Self-Inflicted Harm Could Still Be Workplace Violence and Exception Should Be Deleted**

The third discussion draft contains an exception to the term “workplace violence” and states that it does not include “self-inflicted harm that does [sic] involve violence or threats of violence to others.” Similar language is not included in the CA Healthcare WPV Standard. CNA/NNU opposes the inclusion of this exception. Suicide is a violent event and observing or otherwise being exposed to suicide or attempted suicide by a co-worker, patient or client, or other individual in the workplace may cause psychological trauma or stress and should still be considered workplace violence.⁴

§3343(c) WORKPLACE VIOLENCE PREVENTION PLAN

- **§3343(c): Workplace Violence Prevention Plan Requirements Need to be Strengthened**

As noted in previous CNA/NNU written comments, the workplace violence prevention plan requirements are missing several elements that are necessary to ensure that employers’ plans are effective, and that employees’ safety is protected. Unfortunately, the third discussion draft does not address these concerns.

⁴ Aldrich, R.S. and J. Cerel, “Occupational Suicide Exposure and Impact on Mental Health: Examining Differences Across Helping Professions,” *Journal of Death and Dying*, June 23, 2020, <https://journals.sagepub.com/doi/10.1177/0030222820933019>.

McDonnell, S., S. Flynn, et al., “Suicide bereavement in the UK: Descriptive findings from a national survey,” *Suicide and Life-Threatening Behavior*, May 25, 2022, <https://onlinelibrary.wiley.com/doi/full/10.1111/sltb.12874>.

These detailed elements would make clear all the things that employers need to do to create, implement, and maintain effective workplace violence prevention plans. Additionally, and importantly, inclusion of such clear and explicit requirements would enhance Cal/OSHA's enforcement of the standard by facilitating CSHO's inspections and documentation of violations. Our previous comments advocated for these additional requirements to be included. Our comments, reasoning, and draft language are reiterated below.

- **Workplace Violence Prevention Plans Must Be in Effect at All Times and in All Work Areas and Be Specific to the Hazards and Corrective Measures for Each Work Area and Operation**

As CNA/NNU stated in previous comments, Cal/OSHA should add an explicit requirement that employers' workplace violence prevention plans must be in effect at all times and in all work areas and operations. This is essential for 24-hour operations as well as other workplaces where a small number of employees may work late night or early morning shifts. The Plan itself should also be specific to the hazards and corrective measures for each work area and operation.

The standard should also include an explicit requirement that the employer's workplace violence prevention plan be implemented and maintained in every work area and operation. Workplace violence is a hazard that should be addressed wherever employees perform their jobs. During rulemaking for the CA Healthcare WPV Standard, it was important to move past false assumptions that workplace violence was only a concern in certain "high risk" units like the emergency department and inpatient psychiatric units in order to develop a protective standard. Similarly for workplaces covered by the CA General Industry WPV Standard, workplace violence hazards should be assessed and addressed in all parts of the workplace.

An important role of an effective workplace violence prevention plan would be to identify not only whether a particular worksite presents risks for violence but whether certain circumstances, including time of day, presents particular risks of workplace violence. For example, in clinic settings, our members report experiencing workplace

violence incidents in the waiting room or reception area as well as in treatment rooms and hallways, parking lots and other outside areas.

The following revision to subsection (c) of the third discussion draft would address these concerns:

(c) Workplace Violence Prevention Plan. The employer shall establish, implement and maintain an effective workplace violence prevention plan (Plan) that is in effect at all times in every work area and operation and is specific to the hazards and corrective measures for each work area and operation. . . .

- **§3343(c)(2): Workplace Violence Prevention Plan Requirements Should Also Include Employees' Ability to Review Plan**

§3343(c)(2) provides that employees and their authorized representatives should be actively involved in developing and implementing the Plan, but the third discussion draft does not include the ability of employees and their representatives to review the Plan as well. This is inconsistent with the CA Healthcare WPV Standard. As we have noted in prior comments, the review requirement must include employee involvement. If employees are not included in the plan review process it is highly likely the employer will miss significant elements. Employees are most often the ones who experience and interact with workplace violence risks and hazards and prevention measures that their employer has implemented. Employees are situated to understand what is and is not working regarding workplace policies and procedures. CNA/NNU previously recommended that Cal/OSHA add an explicit requirement that employees be involved in the employer's annual plan review. We still suggest the following revision:

§3343(c)(2) Effective procedures to obtain the active involvement of employees and ~~authorized employee~~ their representatives in developing, ~~and implementing, and reviewing~~ the Plan, including their participation in identifying, evaluating, and correcting workplace violence hazards; designing and implementing training; and reporting and investigating workplace violence incidents.

- **§3343(c)(7) Active Shooter Language Should Be Included in Procedures to Respond to Workplace Violence Emergencies**

As we have noted in our previous comments, CNA/NNU also strongly supports subsection (c)(7) to require employers to include procedures to respond to workplace violence emergencies in their written plans. It is critical that employers prepare response and communication plans and provide effective training to employees. As we have noted previously, the language in subsection (c)(7) is a good addition to this standard. Yet, the third discussion draft deletes a specific reference to active shooter threats. CNA/NNU represents registered nurses who work in outpatient clinics on college campuses and have expressed significant concern with the rise in school shootings. It is an unfortunate reality that workplace violence emergencies, including active shooter threats, are occurring with increasing frequency. In fact, the Federal Bureau of Investigations has noted, “For the period 2017–2021, active shooter incident data reveals an upward trend: the number of active shooter incidents identified in 2021 represents a 52.5% increase from 2020 and a 96.8% increase from 2017.”⁵

Given these alarming increases, CNA/NNU urges Cal/OSHA to reinsert “including active shooter threats” in subsection (c)(7) to make it explicit that active shooter threats are included in the Plan. In order to protect employees and provide a safe and healthy workplace, there should be explicit requirements for procedures to respond to active shooter events.

- **§3343(c)(12) Changes to the Review Requirement Are a Step in the Right Direction but Unfortunately Not Protective Enough**

First, CNA/NNU appreciates that the third discussion draft revised this section so that employers must review workplace violence prevention plans after a workplace violence incident even where injuries have not occurred. Our previous comments included an example where “two patients pulled out knives during group therapy.” Even though no one was physically injured in this incident, it is still an incident that the employer needs

⁵ “Active Shooter Incidents in the United States in 2021,” Federal Bureau of Investigations.
<https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2021-052422.pdf/view>.

to respond to and address to protect employees and to prevent future incidents. CNA/NNU strongly supports this change to subsection (c)(12).

Our previous comments noted our concern that the review requirement should be annual not periodic. Having a regular and consistent review is important. The use of the descriptor "periodically" is inadequate. If an employer were to evaluate the effectiveness of their workplace violence prevention plan once every ten years that would technically meet the definition of "periodically." But such a review would be ineffective given the physical, administrative, staffing, and other factors that can change substantially within periods of time much shorter than ten years. Cal/OSHA should be more precise in its regulatory requirement by including a requirement that plans be reviewed annually. Several other Cal/OSHA standards include an annual review requirement, including the Safe Patient Handling Standard (8 CCR 5120), the Aerosol Transmissible Diseases Standard (8 CCR 5199), and the Bloodborne Pathogens Standard (8 CCR 5193).

Finally, as noted in our prior written comments, Cal/OSHA should add more specific requirements for the annual plan review to mirror the requirements in the CA Healthcare WPV Standard. Specifying these requirements will make employers' workplace violence prevention plans more effective and will enhance Cal/OSHA's enforcement activity. We still suggest including the following language as a new subsection (e):

(e) Review of the Workplace Violence Prevention Plan. The employer shall establish and implement a system to review the effectiveness of the Plan for the overall facility or operation at least annually, in conjunction with employees and their representatives regarding the employees' respective work areas, services, and operations. Problems found during the review shall be corrected in accordance with subsection (c)(12). The review shall include evaluation of the following:

(1) Staffing, including staffing patterns and patient classification systems that contribute to or are insufficient to address the risk of violence;

(2) Sufficiency of security systems, including alarms, emergency response, and security personnel availability;

(3) Job design, equipment, and facilities:

(4) Security risks associated with specific units, areas of the facility with uncontrolled access, late-night or early morning shifts, and employee security in areas surrounding the facility such as employee parking areas and other outdoor areas.

(5) The Plan, in accordance with Section 3203(a)(4)(B) and (C), as it applies to units within a facility, the facility as a whole, or the particular operation, shall also be reviewed for the unit, facility or operation. and updated whenever necessary as follows:

(A) To reflect new or modified tasks and procedures which may affect how the Plan is implemented such as changes in staffing, engineering controls, construction or modification of the facilities, evacuation procedures, alarm systems and emergency response;

(B) To include newly recognized workplace violence hazards;

(C) To review and evaluate workplace violence incidents which result in a serious injury or fatality; or

(D) To review and respond to information indicating that the Plan is deficient in any area.

(E) When a revision to the Plan is needed for only part of the facility or operation, the review process may be limited to the employees in the unit(s) or operation[s] affected by the revision, independently of the annual review for the Plan for the facility as a whole.

- **Protections for Employees Who Seek Assistance from Local Law Enforcement During a Violent Incident Are Necessary**

As detailed in our prior comments, CNA/NNU believes it is important that Cal/OSHA maintain the protections that were included in SB 1299 and the CA Healthcare WPV Standard for employees who call local law enforcement during a violent incident. Without such a requirement, employers may prohibit employees from gaining assistance from local law enforcement during a violent incident. Employees should always be able to exercise their right to call 911 in an emergency or to otherwise seek assistance from local law enforcement and emergency services.

Cal/OSHA should also maintain the important language from the CA Healthcare WPV Standard that prohibits retaliation against employees for seeking assistance from local law enforcement during a violent incident as this is an equally important protection to ensure that employees are able to exercise their right to seek assistance from local law enforcement during a violent incident. As we have noted previously, CNA/NNU suggests the following language from the CA Healthcare WPV Standard become new subsection (c)(4):

(c)(4) Effective procedures for obtaining assistance from the appropriate law enforcement agency during all work shifts. The procedure may establish a central coordination procedure. This shall also include a policy statement prohibiting the employer from disallowing an employee from, or taking punitive or retaliatory action against an employee for, seeking assistance and intervention from local emergency services or law enforcement when a violent incident occurs.

- **Hazard Assessment Requirements Need Additional Detail**

As we have written previously, in subsection (c)(9), it is not clear why "identify" and "evaluate" are split regarding different procedures. The draft language indicates that procedures to identify hazards only need to include periodic inspections while evaluating hazards can include other sources of information about workplace violence hazards. But examining past reports of workplace violence incidents or listening to employees' concerns about workplace violence may identify new workplace violence hazards. We still recommend that Cal/OSHA recombine "identify and evaluate" as well as include a list of specific aspects that need to be considered when identifying workplace violence risks and hazards.

And, as discussed in our previous comments, CNA/NNU maintains that the discussion draft should also include a requirement that employers also evaluate hazards whenever conditions in the workplace change.

However, even with these changes the current language is still inadequate. Cal/OSHA developed descriptive language in the CA Healthcare WPV Standard that should be used as a template for the CA General Industry WPV Standard to clarify what employers need to do to identify workplace violence hazards. This should also address any confusion about how to assess workplace violence hazards while walking through the workplace. In our previous comments, we have made suggestions on including adapted language from the CA Healthcare WPV Standard for fixed operations. Cal/OSHA may also consider including language for non-fixed workplaces such as work areas in the field and other off-site operations similar to the home healthcare requirements in subsection (c)(9)(B) of the CA Healthcare WPV Standard.

As we have written previously, the following suggested revisions would address these concerns:

(c) Procedures to identify and evaluate workplace violence hazards, including scheduled periodic inspections to identify unsafe conditions and work practices and procedures to evaluate workplace violence hazards identified through periodic inspections, employee concerns, workplace violence incidents, and whenever the employer is made aware of a new or previously unrecognized hazard. Assessment procedures to identify and evaluate environmental risk factors, including community-based risk factors for each work area and operation. This shall include a review of all workplace violence incidents that occurred in the workplaces and operations within the previous year whether or not an injury occurred.

(A) For fixed workplaces: Procedures to identify and evaluate environmental risk factors for workplace violence in each work area and operation, including areas surrounding the workplace such as employee parking areas and other outdoor areas. Assessment tools, environmental

checklists, or other effective means shall be used to identify locations and situations where violent incidents are more likely to occur. Procedures shall specify the frequency with which such environmental assessments will take place. Environmental risk factors shall include, as applicable, but shall not necessarily be limited to the following:

1. Employees working in locations isolated from other employees because of being assigned to work alone or in remote locations during night or early morning hours or where an assailant could prevent entry into the work area by responders or other employees;

2. Poor illumination or blocked visibility of areas where possible assailants may be present;

3. Lack of physical barriers between employees and persons at risk of committing violence;

4. Lack of effective escape routes;

5. Obstacles and impediments to accessing alarm systems;

6. Locations within the facility where alarm systems are not operational;

7. Entryways where unauthorized entrance may occur, such as doors designated for staff entrance or emergency exits;

8. Presence of furnishings or objects that can be used as weapons in the areas where workplace violence is likely to occur;

9. Storage of high value items, currency, or pharmaceuticals.

- **Person- or Patient-Specific Risk Factor Assessments Should Be Included**

We have written previously that healthcare operations that were excluded from the CA Healthcare WPV Standard are substantially similar to operations covered under the CA

General Industry WPV Standard. As a result, CNA/NNU supports including language requiring procedures to assess patients and visitors for risk factors for workplace violence. This is also a concern in other industries that interact with members of the public or others in a client-type relationship. In outpatient clinics not included in the CA Healthcare WPV Standard, most of the workplace violence that nurses experience comes from patients and people accompanying patients.

Our previous comments included the following examples of workplace violence that our members who work in outpatient clinics have reported:

- A patient threw a chair at a nurse.
- A patient hit a nurse with his cane.
- A patient was denied a bus pass at the clinic, and they became aggressive and verbally abusive and threatening.
- A patient had reported that they had a means of transportation before a procedure that necessitated sedation. After the procedure, the patient threatened to leave AMA [against medical advice]. When the nurse intervened, the patient threatened the nurse, "You better not stand in my way."
- Two patients pulled out knives during group therapy.

Once again, we recommend adding adapted language from the CA Healthcare WPV Standard to expand the risk factors for workplace violence to reflect patient- or client-specific risks. It is important to include these risk factors that are important for effective workplace violence prevention plans in outpatient clinics even though they may not be applicable in all workplaces covered under the CA General Industry WPV Standard. For example, a patient or client's treatment and medication status, type, and dosage is highly unlikely to be known by a bank teller and assessing it as a risk factor for an individual in that setting would be inappropriate. The inclusion of the "as applicable" language is an important distinction here that enables Cal/OSHA to mandate elements important for some settings like outpatient clinics. The following new subsection (c)(13) would address these concerns:

(c)(13) Procedures to identify and evaluate risk factors associated with individual patients, clients, or other persons who are not employees.

Assessment tools or other effective means shall be used to identify situations in which Type 2 violence is more likely to occur and to assess visitors or other persons who display disruptive behavior or otherwise demonstrate a risk of committing workplace violence. Person-specific risk factors shall include, as applicable, but not necessarily be limited to, the following:

(A) A patient or client's mental status and conditions that may cause them to be non-responsive to instruction or to behave unpredictably, disruptively, uncooperatively, or aggressively;

(B) A patient or client's treatment and medication status, type, and dosage, as is known to the health facility or other employer and employees;

(C) A patient or client's history of violence, as is known to the health facility and employees;

(D) Any disruptive or threatening behavior displayed by a patient or client.

- **Engineering and Work Practice Controls Must Be Prioritized**

Our previous written comments have dealt with this issue as well. CNA/NNU believes Cal/OSHA should add more detail that prioritizes the use of engineering and work practice controls in correction measures to subsection (c)(10). The corresponding subsection in the CA Healthcare WPV Standard includes such requirements (8 CCR §3342(c)(11)). This is an important requirement to maintain in the CA General Industry WPV Standard.

As we have written previously, employers often rely exclusively on training and worker behavior when responding to workplace violence. When these are the only measures an employer implements, it effectively shifts the burden of prevention onto employees. While training is an important element of workplace violence prevention, engineering and work practice or administrative controls should be prioritized.

Cal/OSHA should make this explicit in the CA General Industry WPV Standard. The following suggested edits would address these concerns:

(c)(10) 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. Corrective measures shall include, as applicable, but shall not be limited to:

(A) Ensuring that sufficient numbers of staff are trained and available to prevent and immediately respond to workplace violence at all times. A staff person is not considered to be available if other assignments prevent the person from immediately responding to an alarm or other notification of a violent incident.

(B) Providing line of sight or other immediate communication in all areas where patients, clients, or members of the public may be present. This may include removal of sight barriers, provision of surveillance systems or other sight aids such as mirrors, use of a buddy system, improving illumination, or other effective means.

(C) Configuring work areas and other spaces in the workplace so that employee access to doors and alarm systems cannot be impeded by a patient, client, other persons, or obstacles.

(D) Removing, fastening, or controlling furnishings and other objects that may be used as improvised weapons in areas where patient, clients, or

other persons who have been identified as having a potential for workplace Type 2 violence are reasonably anticipated to be present.

(E) Creating a security plan to prevent the transport of unauthorized firearms and other weapons into the workplace in areas where visitors or arriving patients, clients, or other persons are reasonably anticipated to possess firearms or other weapons that could be used to commit Type 1 or Type 2 violence. This shall include monitoring and controlling designated public entrances by use of safeguards such as weapon detection devices, remote surveillance, alarm systems, or a registration process conducted by personnel who are in an appropriately protected work station.

(F) Maintaining sufficient staffing, including security personnel, who can maintain order in the workplace and respond to workplace violence incidents in a timely manner.

(G) Installing, implementing, and maintaining the use of an alarm system or other effective means by which employees can summon security and other aid to defuse or respond to an actual or potential workplace violence emergency.

(H) Creating an effective means by which employees can be alerted to the presence, location, and nature of a security threat.

(I) Establishing an effective response plan for actual or potential workplace violence emergencies that includes obtaining help from workplace security or law enforcement agencies as appropriate. Employees designated to respond to emergencies must not have other assignments that would prevent them from responding immediately to an alarm to assist other staff. The response plan shall also include procedures to respond to mass casualty threats, such as active shooters, by developing evacuation or sheltering plans that are appropriate and feasible for the workplace, a procedure for warning employees of the situation, and a procedure for contacting the appropriate law enforcement agency.

(I) Assigning or placing sufficient numbers of staff, to reduce patient or client-specific Type 2 workplace violence hazards.

§3343(d) VIOLENT INCIDENT LOG

- **CNA/NNU Strongly Supports the Addition of the Violent Incident Log Requirement but the May 17, 2022 Revisions to this Section Are Problematic**

Our previous comments noted CNA/NNU's strong advocacy for the inclusion of a violent incident log requirement in the CA General Industry WPV Standard. As a result, CNA/NNU supports Cal/OSHA's addition of such a requirement. Our previous comments also strongly recommended that Cal/OSHA include more information in the violent incident log, as is required under the CA Healthcare WPV Standard. Such information, including a detailed description of the incident, can be important for understanding what happened in order to guide prevention.

The third discussion draft, however, deletes much of the specific and detailed information previously included. For example, under the revisions, employers do not have to record post-incident response and investigation. They also no longer need to record the "specific" location of the incident and instead only have to record the location which could be more generalized. For example, an employer could record the address of a healthcare clinic rather than the specific exam room or location in the clinic where the workplace violence occurred. The third discussion draft also deletes specific information relating to the nature of the incident including, among other things, whether it involved physical attack, attack with a weapon or object, threat of physical force, or sexual assault. Instead, employers must simply record a description of the incident. Similarly, the third discussion draft makes significant changes to subsection (d)(4) relating to the consequences of the incident.

All these changes unfortunately mean the discussion draft is a less protective standard. The violent incident log is an important recordkeeping requirement. It contains information that is not recorded anywhere else. CNA/NNU is concerned that the third discussion draft's general, non-specific nature of these points of information will result in a failure to sufficiently protect employees because employers will lack a complete understanding of the workplace violence incident and therefore be unable to prevent

future harm. So, for example, in the case where the employer is allowed to simply record the address of a clinic rather than the specific location in the clinic where the workplace violence incident occurred, that more detailed information concerning the location of the incident is important to capture because there may be a pattern of violence happening in particular rooms or areas of the facility which would need targeted evaluation and attention to address. If employers are not required by Cal/OSHA to record detailed information, they will not perform a thorough evaluation of risk factors and the workplace violence prevention plan will not be as effective. Workers' rights to a safe and healthy workplace will be adversely affected by these changes, and CNA/NNU urges Cal/OSHA to reinsert the more detailed information that is deleted in the third discussion draft.

Moreover, as we have written previously, CNA/NNU advocates that Cal/OSHA include more information in the violent incident log, consistent with the CA Healthcare WPV Standard. For example, a classification of the circumstances at the time of the incident (e.g., among other things, whether the employee was working in poorly lit areas, working during a low staffing level, in a high crime area, or isolated or alone) and a classification of where the incident occurred (e.g., among other things, in a patient or client room, hallway, waiting area, restroom, parking lot, or break room). All of this information is essential for an effective evaluation of workplace violence incidents in the workplace and assessment of the effectiveness of the workplace violence prevention plan, which is necessary to successfully prevent future violence.

- **§3343(d) Exception for Employers When They Have Had No Workplace Violence Incidents in the Previous Five Years Should be Deleted**

The third discussion draft includes a new exception that is not contained in the CA Healthcare WPV Standard. Under the exception, employers do not need to maintain a log if they have had no workplace violence incidents in the previous five years. CNA/NNU strongly urges Cal/OSHA to delete this exception. Exempting employers from violent incident log reporting requirements in this way will only serve to incentivize employers to not report workplace violence incidents in the first place. This is likely to result in employer pressure on employees not to report incidents.

Already, our nurses report that it is common for supervisors and managers to discourage employees from making reports of violence from patients. These supervisors and managers even perpetuate a dangerous view of workplace violence by suggesting that, in healthcare, workplace violence is simply part of the job. As a result, they imply that reporting incidents is futile. A 2015 article on a survey of hospital workers on workplace violence reporting found that 62 percent of respondents had been the target of violence in the past year, but that 88 percent of respondents who had experienced a violent incident indicated they had not reported to their employer in the previous year.⁶ Cal/OSHA should do everything it can to ensure that employees can safely report workplace violence incidents rather than inadvertently creating an incentive for employers to retaliate and pressure employees not to report.

Furthermore, allowing employers to avoid the violent incident log requirements will mean even less information is collected and future incidents of workplace violence may not be prevented. For example, it is not clear whether, in the instance where an employer has a workplace violence incident today but has not had one within the previous five years, would that employer have to log today's incident? While perhaps unintended, the exception in the third discussion draft could be read to allow employers not to log such an incident. Moreover, subsection (c)(12) requires employers to have procedures to review the effectiveness of the Plan after a workplace violence incident and to revise the Plan as needed. But, in the example, if there is no log of today's workplace violence incident, then how can an employer sufficiently assess the Plan without specific details of the incident obtained via the log?

And, finally, if an incident occurs today and the employer is exempt from recording it, does that mean that any future workplace violence incidents within the next five years must be logged in a violent incident log? How will this be tracked if the incident that occurred today was never logged?

For all these reasons, CNA/NNU strongly urges Cal/OSHA to delete this exception.

⁶ Arnetz JE, Hamblin L, et al. (2015). Underreporting of Workplace Violence: Comparison of Self-Report and Actual Documentation of Hospital Incidents. *Workplace Health and Safety* 63: 200-10.

§3343(e) TRAINING

- **§3343(e) Training Requirements Need to be More Robust**

The revisions to the third discussion draft delete language requiring that employees be provided initial training when the Plan is first established and when an employee is newly hired or newly assigned to perform duties for which training was not previously provided. Our previous comments raised concerns with the reliance on this approach and, more specifically, the lack of an annual refresher training requirement to ensure that employees have information about employers' updated workplace violence prevention plans. As discussed in more detail below, the changes to the third discussion draft, however, do not provide clarity on when training must be provided and instead introduce a two-tiered employee training system that will provide more detailed training, including training on job-specific workplace violence hazards, *only* to employees of certain employers (those who have had a workplace violence incident within the previous five years).

- **§3343(e)(1) Third Discussion Draft Requires Only "General Awareness" Training**

The third discussion draft replaces the more specific training on workplace violence risks that employees are reasonably anticipated to encounter in their jobs with "general awareness" training. It is not clear what this means particularly in a day and age when employers can purchase generic "off the shelf" workplace violence training programs that are not specific to each workplace. We suspect that it means that the training can be non-specific and does not have to include job-specific workplace violence hazards and the corrective measures the employer has taken to correct those hazards. And, pursuant to subsection (e)(2), the "general awareness" training would also not have to include how an employee can seek assistance to prevent or respond to violence. As explained in more detail below, CNA/NNU has significant concerns with the changes to this section. In order to protect employees and their right to a safe and healthy workplace, they should be provided with training that gives them the knowledge and understanding of the workplace violence hazards they may encounter and how to respond should a workplace violence incident occur. Simply having a "general awareness" of their

employer's workplace violence prevention plan is not enough.

- **§3343(e)(2) Third Discussion Draft Creates Two-Tiered Employee Training System That Requires Only Employers Who Have Had a Workplace Violence Incident Within the Previous Five Years to Provide More Detailed Training, Including Training on Job-Specific Hazards**

Subsection (e)(2) is essentially an exemption from more detailed training, including training on job-specific hazards, as well as requirements that employers provide violent incident logs and information on how to obtain copies of (1) records of workplace violence hazard identification, evaluation, and correction; (2) training records; and (3) violent incident logs. Like the exception for violent incident logs discussed above, CNA/NNU is concerned this revision could have the inadvertent consequence of incentivizing employers to reduce reporting of workplace violence incidents.

Furthermore, it is not clear why only employees of certain employers should be provided with training on workplace violence hazards specific to their jobs as well as information on the corrective measures their employer has taken to address these hazards. The unfortunate reality is that workplace violence can occur at any time, to any employer, and all employees must be trained early and often. It is important for the effectiveness of an employer's workplace violence prevention plan that all employees understand the plan, their roles under the plan including how to seek assistance to prevent or respond to violence, what workplace violence hazards have been identified in the workplace, and what measures the employer has taken to correct those hazards. Training is vital so that employees fully understand their employer's workplace violence prevention plan — particularly in the context of the employee's specific job — and are able to activate it should a workplace violence incident arise.

Finally, §3343(c)(2) requires employers to obtain the active involvement of employees in developing and implementing the employers' workplace violence prevention plan. Yet how will employees truly be able to participate in this process if they have not received the training exempted under §3343(e)(2)?

For all these reasons, CNA/NNU respectfully requests that this approach be revised so

that employees of all employers receive the training necessary to prevent workplace violence in the first place and to respond to workplace violence incidents should they occur.

- **§3343(e) Annual Refresher Training Requirement Still Needed**

As we have written previously, CNA/NNU believes an annual refresher training requirement is a necessary part of any workplace violence prevention standard. For example, the CA Healthcare WPV Standard contains such a requirement. An annual refresher training requirement is an important mechanism to ensure that employees have information about employers' updated workplace violence prevention plans. Additionally, if an employee receives training only when they are first hired, it is unlikely they will remember important information from that training five or ten years later without a refresher.

- **§3343(e)(3) Third Discussion Draft Lacks a Requirement That Employers Update Employees on Changes to Their Workplace Violence Prevention Plans or When New Equipment or Work Practices Are Introduced**

Subsection (e)(3) requires employers to provide additional training when a new or previously unrecognized workplace violence hazard has been identified, and the additional training can be limited to that new hazard. As noted in our prior comments, for an employer's plan to be effective, the employer must adjust and adapt the plan in response to new hazards, changing conditions in the workplace, the introduction of new equipment or work practices, or when an injury occurs. But the training provisions in the third discussion draft do not recognize these conditions. And there is no requirement that employers keep employees updated on changes to their workplace violence prevention plans. CNA/NNU encourages Cal/OSHA to address the lack of a requirement that employers update employees on changes to their workplace violence prevention plans or when new equipment or work practices are introduced.

- **§3343(e) Third Discussion Draft Does Not Address Lack of a Requirement for Clear Mechanism for Employees to Be Able to Ask Questions and Get Answers**

During Training

As detailed in our previous comments, in CNA/NNU's experience, the majority of training for employees is conducted through online modules that rarely have a mechanism for employees to ask questions unless Cal/OSHA has required such a mechanism. For example, under the CA Healthcare WPV Standard, Cal/OSHA requires that there be a clear mechanism for employees to be able to ask questions and to get an answer from someone who is knowledgeable about the employer's workplace violence prevention plan. Similar language should be added to the CA General Industry WPV Standard.

- **§3343(e) Language Should Be Added to Require Training for Security Staff or Other Responders to Workplace Violence Incidents**

CNA/NNU has written previously that, for workplaces that have on-site or on-call security staff or other responders to workplace violence incidents as part of their workplace violence prevention plans, appropriate and effective training for these employees is important to an effective response. Such training is also important for employees who are expected to encounter and respond to violent or potentially violent patients, clients, or other individuals. Where security staff is contracted, training on the workplace violence prevention plan for the worksite is equally important. We have proposed adapting language from the CA Healthcare WPV Standard to require training for security staff or other responders to workplace violence incidents.

CNA/NNU encourages Cal/OSHA to address these concerns.

- **§3343(e) All Employees Working in the Covered Work Areas or Operations Should Be Provided Training on the Employer's Workplace Violence Prevention Plan**

Our previous comments have detailed that it is also important to include a requirement that all employees who are working in the covered work areas or operations be provided training on the employer's workplace violence prevention plan. Increasingly workplaces employ contracted employees. Under the third discussion draft, employers

are only required to train direct employees. Cal/OSHA should clearly require that all employees who work in the covered work areas or operations should be covered and provided training on the employer's workplace violence prevention plan.

The following language would address all the above concerns:

Replace existing subsection (e) with the following:

(e) Training. The employer shall provide effective training to employees as specified in subsections (e)(1) and (2) that addresses the workplace violence risks that employees are reasonably anticipated to encounter in their jobs. Training material appropriate in content and vocabulary to the educational level, literacy, and language of employees shall be used.

(1) All employees working in the work area, facility, service or operation shall be provided initial training as described in subsection (e)(2) when the Plan is first established and when an employee is newly hired or newly assigned to perform duties for which the training required in this subsection was not previously provided and shall also be provided additional training as described in subsection (e)(3).

(2) Initial training shall address the workplace violence hazards specific to the employees' jobs and in the work area or operation, the corrective measures the employer has implemented, an explanation of the employer's Plan, how to seek assistance to prevent or respond to violence, strategies to avoid physical harm, how to report workplace violence incidents or concerns to the employer without fear of reprisal, how the employer will address workplace violence incidents, and how the employee can participate in reviewing and revising the Plan.

(3) Additional training shall be provided when a new or previously unrecognized workplace violence hazard has been identified. The additional training may be limited to addressing the new workplace violence hazard.

(4) Refresher training shall be provided at least annually to review the topics included in the initial training and the results of the review required in subsection (e).

(5) Employees assigned to respond to workplace violence incidents or whose jobs involve confronting or controlling persons exhibiting aggressive or violent behavior shall be provided training on the following topics prior to initial assignment and at least annually thereafter. This is in addition to the training required in subsection (e)(1). This additional training shall include:

- (A) General and personal safety measures;
- (B) Aggression and violence predicting factors;
- (C) The assault cycle;
- (D) Characteristics of aggressive and violent patients and victims;
- (E) Verbal intervention and de-escalation techniques and physical maneuvers to defuse and prevent violent behavior;
- (F) Strategies to prevent physical harm;
- (G) Appropriate and inappropriate use of restraining techniques in accordance with Title 22, as applicable;
- (H) Appropriate and inappropriate use of medications as chemical restraints in accordance with Title 22, as applicable;
- (I) An opportunity to practice the maneuvers and techniques included in the training with other employees they will work with, including a meeting to debrief the practice session. Problems found shall be corrected.

(6) All training provided under subsection (f) shall include an opportunity for interactive questions and answers with a person knowledgeable about the employer's workplace violence prevention plan.

§3343(f) RECORDKEEPING

- **CNA/NNU Suggests Cal/OSHA Add Subsection (f)(4) Documents to the List of Records Employees and Their Representatives May Obtain**

As we have noted previously, CNA/NNU supports Cal/OSHA's addition of the requirement for employers to maintain violent incident logs for five years. Maintenance of violent incident logs is an essential part of creating an effective workplace violence prevention plan. Access to violent incident logs and other records regarding the employer's workplace violence prevention plan is important for employees to be able to actively engage with the employer regarding the development, implementation, and review of the effectiveness of the plan. This is also why it is so important that certain employers not be exempted from the requirement to maintain a workplace violence incident log as explained above.

As we have written previously, CNA/NNU also supports the language requiring that employers maintain records of workplace violence incident investigations.

We remain concerned, however, that the discussion draft only requires that employers make the records required by (f)(1), (f)(2), and (f)(3) available to employees and their representatives. As detailed in our previous comments, Cal/OSHA should also include subsection (f)(4), which requires employers to maintain records of workplace violence incident investigations, to this list of records that need to be made available to employees and their representatives. Employees and their representatives must have access to detailed records of violent incidents in addition to the summary violent incident logs in order to understand workplace violence incidents that have happened in the workplace and to communicate clearly with the employer about their workplace violence prevention plan.

- **Language Should Be Added to Require Employers to Provide A Copy of the Record Without Cost to the Employee**

Consistent with the CA Healthcare WPV Standard, CNA/NNU encourages Cal/OSHA to consider adding language requiring employers to provide a copy of the requested record without cost to an employee. This will help to ensure that employees are able to exercise their right to records.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Roberson". The signature is written in a cursive, flowing style.

Stephanie Roberson
Director, Government Relations
California Nurses Association/National Nurses United