



July 18, 2022

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

Dear Mr. Graulich:

We appreciate the opportunity to comment on a new preliminary draft of the Workplace Violence Prevention Standard for General Industry. We note with great concern that 21% of fatal work injuries were caused by assaults and violent acts in California between 2013-2019. Only transportation incidents caused more fatalities.<sup>1</sup> A strong and comprehensive regulation is urgently needed to address the pervasive and growing problem of workplace violence.

We support the broadening of the scope of the proposal beyond risk of physical injury and the requirement for review of workplace violence plans after any incident, even if no injury occurred. We are concerned that many other proposed changes weaken the proposal so it is far less protective than the standard for violence prevention in health care. This will make the standard both more challenging to enforce and more difficult for employers, including small employers to understand the regulation requirements. We are especially concerned that employers would only be required to maintain a log of violent incidents and provide training in workplace specific violence hazards if they have recorded a violent incident in the previous 5 years. This is a huge disincentive to recording incidents and will leave many workers without urgently needed health and safety training that could prevent or mitigate violent incidents.

We have the following more detailed comments and recommended revisions to

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<sup>1</sup> [https://www.dir.ca.gov/dosh/cfoi/CFOI\\_2019/Fatalities-Report-2013-2019.pdf](https://www.dir.ca.gov/dosh/cfoi/CFOI_2019/Fatalities-Report-2013-2019.pdf)  
DIR (2021) Fatal Occupational Injuries in California 2013-2019.

further strengthen and improve the clarity of the proposal:

### **3343(b) Definitions**

We recommended deleting the definition of “Injury” because it is overly restrictive and unnecessary. The Health Care Violence Prevention regulation does not include a definition of injury.

We strongly support the broadening of the proposed definition of “Threat of Violence” 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 note that the definition of Union Representative has been deleted and that the terms “authorized representative” and “representative” are used at different points in the regulation without definition.

We are concerned that authorized representative could be construed to be limited to representatives authorized by the employer and strongly prefer the term “designated representative” which is used in the IIPP regulation T8 section 3203 and defined as:

“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.

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 still strongly recommend that the definition of “Workplace violence” should be expanded to 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.

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. . . .

We oppose adding “self-inflicted harm that does not involve violence or threats of

violence to others” to the Exception to types of workplace violence. Such incidents can clearly cause stress and psychological trauma in other employees.

We recommend adding definitions of Emergency, Engineering Controls, Environmental Risk Factors, Person-Specific Risk Factors and Work Practice Controls that are included in the violence prevention standard for health care with modification from patient-specific to person-specific risk factors.

### **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 are very concerned to see that revised text in (c)(3) deletes requirements for employers in multi-employer and dual employer relationships to coordinate on implementation of workplace violence prevention plans and that multi-employer coordination ensure that all workers receive training and we oppose these revisions. Coordination among employers sharing a work place is critical to preventing and responding to workplace violence incidents.

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 therefore 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.

Of greatest importance, to better prevent violent incidents, subsection (c)(9) should be revised to require evaluation of workplace environmental risk factors as well as workplace violence hazards as is required in the violence prevention standard for health care.

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)(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.

We oppose the revision of (c)(7) that deletes specific reference to active shooter threats because active shooter threats are a growing problem in California and require specialized prevention, training and response procedures. We also urge you to amend (c)(7) to add a requirement for employees to be permitted access to cell phones at all times for emergency use.

We recommend revising section (c)(12) to require annual rather than periodic review of violence prevention plan because periodic is a vague and unenforceable

term.

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

We strongly oppose proposed changes which weaken specific requirements for how violent incident logs are maintained because comprehensive documentation of incidents of violence and steps taken to correct hazards are a cornerstone of preventing further incidents. The violence prevention standard for health care includes all of these more specific requirements.:

- The log should be required to be reviewed at least annually, rather than periodically. We note that periodically is not defined so is not enforceable.
- Requirements for including post incident response and investigation should be retained.
- Specific requirements to include in describing the nature of violent incidents should be retained to ensure comprehensive and detailed entries.
- The log should be required to disclose whether medical treatment was provided, whom provided any necessary assistance and amount of lost time from work.

We also strongly oppose the exception to maintaining a log that would be triggered when an employer has had no workplace violence incidents in the past 5 years because this provides a clear disincentive to report and document incidents.

### **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.

We oppose deletion of the requirement to provide initial training when the plan is first established and when an employee is newly hired or assigned to new duties because without these requirements training requirements will be very difficult to enforce.

We also strongly oppose narrowing of the requirement for training in workplace violence hazards specific to employees' jobs to employers who have had a violent incident within the previous 5 years. This is analogous to only requiring training in fall protection for roofers who have had a worker fall in the previous 5 years. It also would exempt a new business, such as a new liquor store, from providing training in workplace specific violence hazards for the first 5 years or until an incident happens and would be a strong disincentive to recording incidents.

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

A section (e)(4) should be added that 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. The same subsection should be amended to clarify that any employee or 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 designated 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.

As stated earlier, we feel that including the definition of designated representative from the IIPP would be appropriate here.

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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