

July 18, 2022

Kevin Graulich,  
Senior Safety Engineer  
Division of Occupational Safety and Health  
Department of Industrial Relations, State of California  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

**Submitted electronically:** KGraulich@dir.ca.gov

**RE: Proposed Standard for Workplace Violence Prevention**

Dear Engineer Graulich,

The California Chamber of Commerce and the undersigned organizations submit this letter to provide comment upon the May 17, 2022, revised discussion draft of the Workplace Violence Prevention in General Industry Standard (the "Proposed Standard").

**Context for the Proposed Standard & Request for an Advisory Committee**

As you are well aware, the rulemaking process for the Workplace Violence Prevention Proposed Standard began in 2017 and was not, at that time, proposed as a general industry standard. Notably, Petition 542<sup>1</sup> was specifically focused on the dangers faced by teachers, and emphasized the unique risks that teachers face (including special education teachers) that are not widely shared. Even Standards Board staff analysis<sup>2</sup> acknowledged data indicating that workplace violence issues were not evenly distributed, but instead focused on certain industries.<sup>3</sup>

The initial draft of the Proposed Standard was heavily based on the pre-existing workplace violence standard for healthcare ("Healthcare Violence Standard").<sup>4</sup> Notably, the vast majority of Cal/OSHA stakeholders – across industries and labor groups – did not participate in the rulemaking process on the Healthcare Violence Standard. Due to the absence of review and comment by the diverse mix of stakeholders that would be affected by the Proposed Standard, thorough review and discussion of the heavily healthcare-based draft text is necessary.

Though that process was initiated in 2017-2018, it was understandably put on hold due to COVID-19 and more pressing matters. Now, this new text for the Proposed Standard is the first action in years – and California's workplaces have changed considerably in that time.

To that end – we urge a thorough review by the mechanism of an advisory committee meeting be held regarding the Proposed Standard to allow thorough consideration of its application to the breadth of California's workplaces.<sup>5</sup>

---

<sup>1</sup> Petition 542 initiated the rulemaking process for a general industry workplace violence standard. It is available here: [https://www.dir.ca.gov/oshsb/documents/petition\\_542.pdf](https://www.dir.ca.gov/oshsb/documents/petition_542.pdf)

<sup>2</sup> Prepared by Senior Safety Engineer David Kernazitskas, available here: [https://www.dir.ca.gov/oshsb/documents/petition\\_542\\_staffeval.pdf](https://www.dir.ca.gov/oshsb/documents/petition_542_staffeval.pdf).

<sup>3</sup> Id. at pp. 5-6.

<sup>4</sup> Title 8, CCR Section 3342.

<sup>5</sup> To that end, we appreciate the recent statement by Deputy Chief Berg at the July 14<sup>th</sup> Advisory Committee of his intention to hold such an advisory committee.

## **Substantive Concerns**

### **1) Issues Regarding “Threats of Violence”**

Generally speaking, we have concerns regarding treating non-physical acts as “violence”. Both criminal and tort law in California separate physical and non-physical acts, as physical acts are more immediately harmful and dangerous. Here, we would urge the Proposed Standard focus on those physical acts, and not burden the majority of California’s businesses with recording every time a disgruntled customer or member of the public makes an idle threat.<sup>6</sup> The scope of this obligation is particularly troubling when considering that the Proposed Standard also appears to encompass threats between members of the public that *happen to occur in a workplace*. For example, every time two patrons at a restaurant, bar, or public establishment are perceived to threaten each other, another entry would need to be made.<sup>7</sup> In fact, conduct such as standing too close to another patron and looking at them intensely could be perceived as a course of conduct which put another individual in fear for their safety, and would thus need to be recorded. Such recordings do not protect wor+kers and will not aid in investigation or enforcement – instead, they will add surplus noise to otherwise potentially helpful logged information on when and how violent incidents occur.

#### **a. If Included in the Proposed Standard, “Threat of Violence” Should Be Limited to Reasonable Fears.**

Where California provides protection against threats, such protection is reserved for situations where the threats are objectively threatening – or, in other words, would put a reasonable person in fear for their safety.<sup>8</sup> This element is important, as otherwise unreasonable interpretations by individual employees would qualify and necessitate years of recordkeeping. For example: if an employee believes (unreasonably) that a course of conduct (such as glances from a disagreeable coworker) creates a reasonable possibility that they *might* be injured – then, under the present definition, a “threat” has occurred.

#### **b. The Definition of “Threat of Violence” Should Not Include Any Limitation Regarding “No Legitimate Purpose”.**

The intention of this clause on the definition of “threat of violence” is unclear. At this time, we are not aware of any situation where a threat of violence, as defined, would serve a legitimate purpose, making the applicability of this cause ambiguous.

#### **c. Threats (or Conduct) Resulting in “Stress” Should Not be Covered.**

The expansive inclusion of any threat (including a “course of conduct” that results in “stress”) (see Section (3)(a)) goes far beyond the key focus (violent acts) and also further threatens to dilute relevant information about actual violent events with relatively common interactions.

**Compromise Solution to Concerns #1 (a)-(c).** If “threats of violence” are preserved in the Proposed Standard we propose the following language for Subsection (b)(2):

*“(2) Threat of violence” means a statement or conduct that causes a person to reasonably fear for their safety because there is a reasonable probability that the person might be physically injured, ~~and that serves no legitimate purpose~~.*

---

<sup>6</sup> Not to be impolite, but it is not uncommon for an upset patron or customer to state something akin to “This is poor service! I ought to kick your butt man!” Such comments are relatively common, and, in the supermajority of cases, are idle talk.

<sup>7</sup> See Concern #2 for more detail on this point.

<sup>8</sup> A sampling of these standards includes: Penal Code Section 422(a) re criminal threats (“...causes that person reasonably to be in sustained fear...”); Code of Civil Procedure 527.6 re civil harassment (“...willful statement or course of conduct that would place a reasonable person in fear for the person’s safety...”); Penal Code 646.9(a) re harassment (“...who makes a credible threat with the intent to place that person in reasonable fear for his or her safety...”).

**d. “Threat of Violence” Should Not Rely on the Ambiguous Standard That There Must Be “a Reasonable Possibility the Person Might be Injured...”**

Another concern here is that the definition of “threat of violence” relies on an incredibly ambiguous standard: whether there was “a reasonable possibility the person might be injured.” What percentage chance is the threshold for a “reasonable possibility” of an event occurring? In other words – what likelihood is “reasonable” when assessing an event’s probability? And, assuming that can be resolved, what is the “reasonable possibility” that an event “might” occur? These questions are not rhetorical; businesses and workers across the state will now need to make split-second determinations on when such a possibility is reached. For example: in a sports bar, during a playoff game, contentious fans of opposing teams may yell taunts at one another – at what point do those taunts meet this standard? If a comment seems unlikely to cause a fear of violence – let’s say, 10% chance – is that sufficient?

Because of the ambiguities created by the use of this language in the Proposed Standard, we would urge this language be removed. Below is an example use of an industry-recognized definition which avoids the issue.

**Compromise Solution to Concerns #1 (a)-(d) - Utilize ANSI/ASIS language.**

Here, as the Proposed Standard is presently written, California would be adopting a standard different than this more widely-known ANSI/ASIS standard.<sup>9</sup> Notably, the ANSI/ASIS standard (provided below) includes a requirement that the threat be “reasonably” perceived to convey an intent to harm, and also focuses on physical harm, as suggested above. Also notably, the ANSI/ASIS language avoids the ambiguity surrounding assessing whether an interaction created a “reasonable possibility the person might be injured,” as noted above.

Therefore, if “threats of violence” are preserved in the Proposed Standard, we alternatively propose the following language for Subsection (b)(2) to address all concerns, and reflect industry-recognized standards:

*(2) “threat of violence” means any verbal or physical conduct that conveys an intent or is reasonably perceived to convey an intent to cause physical harm or place someone in fear of physical harm.*

**2) The Proposed Standard Shouldn’t Cover Action by Non-Employees, or Among Non-Employees.**

As drafted, the Proposed Standard is not limited to conduct by employees, or even aimed at employees. Instead, it encompasses conduct in which no employee is involved.<sup>10</sup> We believe it should be limited to conduct either by or affecting employees. Without such a limitation, idle boasting among customers or even members of the public passing through a workplace would require recording and necessitate that the employer maintain a log for five years. Though one can obviously see that the recording obligations for a restaurant, bowling alley, or bar would be potentially overwhelming (and make review of truly important incidents more difficult), similar concerns would also apply in many other venues, including retail stores, entertainment venues, or sports stadiums.

**3) Employee Involvement Poses Unique Risks for Workplace Safety.**

Acknowledging that Cal/OSHA often prefers employee involvement in enforcement, we believe that involvement possesses unique concerns here.

---

<sup>9</sup> ANSI/ASIS WVPI AA-2020.

<sup>10</sup> Notably, because the Proposed Standard covers events that involve no workers being threatened or harmed, it is somewhat ambiguous as to how such instances would fall within Cal/OSHA’s mandate of workplace safety.

Troubling as it is, we must consider the potential that an employee commits a violent act in the workplace – and even carefully plans how they will do so. As a result, giving employees complete access to some of the identified information could *facilitate* workplace violence, instead of preventing it. We are most concerned with employee knowledge or involvement as identified in:

- The drafting and implantation of the Workplace Violence Prevention Plan (Section (c)(2)/(3))
- The identification of, and response to, actual incidents (Sections (c)(7), (9), and (10))

To simplify some of these issues, we would urge that some portions of (c)(2) and (c)(7)(A) be combined into (c)(4) as follows:

“Effective procedures for the employer to accept and respond to employee concerns or reports of workplace violence, provide alerts of potential violence when necessary, and to prohibit retaliation against an employee making...”

In addition, certain federal laws create safety-related obligations. For example, the Maritime Transportation Security Act of 2002 also creates safety obligations surrounding transportation and ports and employee training.

These are complicated concerns to balance – and though we cannot offer potential language at this time, we are hopeful that we can address these concerns in ongoing communications and potentially as part of the advisory committee process.

## **Technical Corrections**

These are apparent errors in the Proposed Standard, which should be corrected.

1. Section (b)(3)(C)(2) should not include inmates, as they are exempt under Section (a) EXCEPTION 3.
2. “Type 4 Violence” should define the relationship as an actor who “presently has, or previously had a personal relationship with an employee.” Present text is vague as to an individual who “is known to have” a relationship.
3. Section (b) EXCEPTION - Should read “... or self-inflicted harm that does not involve violence or threats of violence to others.”

Thank you for the opportunity comment on the Proposed Standard.

Sincerely,



Robert Moutrie  
Policy Advocate  
California Chamber of Commerce  
on behalf of

American Composites Manufacturers  
Association  
Associated Roofing Contractors  
California Association of Winegrape Growers  
California Chamber of Commerce  
California Farm Bureau

California Framing Contractors Association  
California Grocers Association  
California Restaurant Association  
California Retailers Association  
Residential Contractors Association  
Western Steel Council

Copy: Eric Berg, [eberg@dir.ca.gov](mailto:eberg@dir.ca.gov)  
Danielle Lucido [DLucido@dir.ca.gov](mailto:DLucido@dir.ca.gov)