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RE: Comments and Recommendations on Cal/OSHA's Revised Workplace Violence Prevention in General Industry Discussion Draft

Dear Mr. Graulich,

Please accept these comments and recommendations from the **Phylmar Regulatory Roundtable (PRR) Occupational Safety and Health, OSH Forum** in response to the Division of Occupational Safety and Health's (Cal/OSHA or Division) request for written comments on the third draft of the [Workplace Violence Prevention in all Industries](#), §3343, posted by the Division on May 17, 2022.

PRR is a member-driven group of 37 companies and utilities, 19 of which rank amongst the Fortune 500. Combined, PRR members employ more than 1.7 million American workers and attain annual revenues in excess of \$1 trillion. Individual PRR members are Environmental Health and Safety (EHS) professionals committed to continuously improving workplace safety and health. PRR provides informal benchmarking and networking opportunities to share best practices for protecting employees. In addition, members work together during the rulemaking process to develop recommendations to federal and state occupational safety and health agencies for effective workplace regulatory requirements.

These comments were developed from PRR member experiences and expertise in developing and implementing threat management and workplace violence prevention programs. In addition to the PRR members who are EHS professionals, many members who contributed to these comments have law enforcement and security backgrounds. It is from these individuals' first-hand experience managing security and robust threat prevention programs at their organizations which form the basis of these comments. Nevertheless, the opinions expressed below are those of PRR and may differ from beliefs and comments of individual PRR members.

General Comments

PRR thanks the Division for considering our recommendations submitted in 2018 and for its work to revise the proposed standard based on stakeholder concerns. We also appreciate the opportunity to submit written comments during the informal rulemaking process and the Division's goal to have an Advisory Committee in 2023 to continue discussion on this rule. It is the openness and dialogue with stakeholders that will ensure a final regulation will be effective at preventing workplace violence incidents and fatalities, reducing the impact on employees and their families.

PRR continues to support the performance-oriented approach of the draft rule which is necessary given that the rule will cover nearly all employers in General Industry with highly diverse work environments. We also appreciate the obvious efforts that were made to streamline and clarify the language in the previous draft. It is apparent that Division Staff listened to all stakeholders and is dedicated to drafting a clear and effective rule.

In previous comments PRR expressed that the critical issue members had were related to privacy concerns that could result from information documented on the previously proposed Violent Incident Log and subsequent release. PRR members go to great lengths to ensure that the identities of the reporting employee, workplace violence victim, and witnesses are protected from the perpetrator or the threat of violent behavior. Instead of reviewing these privacy concerns in these comments, we refer the Division to PRR's comments submitted in March and December 2018 that clearly illustrate, with extensive rationale, why detailed information should not be included in the Violent Incident Log (the Log). This newly proposed draft alleviates some of our concerns and we applaud the Division for the efforts made to minimize unintended consequences and privacy risks by reducing the level of sensitive detail required in the Log. However, major concerns with the proposed language remain and are addressed below. PRR has been involved with this rulemaking since its inception and has always supported employee protection and prevention of workplace violence incidents. PRR shares Cal/OSHA's goal of improving workplace safety and health and offer the following comments and recommendations with the intention of achieving a workplace violence prevention regulation that will be truly effective and impactful.

We appreciate the time it has taken to get to this point and applaud Division Staff for taking the time and resources to revive this rule from being "on the shelf" due to COVID-19. It has been clear from stakeholders on all sides, including members of the Occupational Safety and Health Standards Board (OSHSB/Board), that this is an important regulation and people are highly interested to quickly move forward. We, too, would like to see the finish line. However, it is important to recognize that, for many reasons, including COVID-19, society, and the workplace

have changed since the last draft was proposed and discussed over three and a half years ago (October 2018).

PRR member experience managing workplace violence incidents and their perspectives have also evolved. In addition, many of the stakeholders previously involved with this original drafting have moved on. Due to this, PRR’s perspective and recommendations on the proposed rule have also changed.

To ensure alignment and understanding of the goals and intent of this rule, in addition to the need to address significant concerns with this draft, PRR is thankful to learn that the Division will hold another Advisory Committee before proceeding with a final draft.

PRR also thinks that it is important and requests that the Division share the impact and effectiveness of the Violence Prevention in Health Care standard (§3342) prior to the Advisory Committee meeting. That rule has been in place for over five years (since April 1, 2017) and was the basis for this rule. It would be prudent for the Division to share with stakeholders the data and information collected and use that information as decisions are being made on this text. It is clear in the text of the general industry draft that the Division has a goal to maintain alignment with the health care text. PRR agrees that there are some benefits to doing this; however, we believe that in doing so the Division will miss major opportunities to improve the language of the general industry rule. As much as stakeholders want to quickly move forward we implore the Division to take the time to draft a regulation that is truly effective and appropriate for *general industry*.

We also encourage the Division to consult law enforcement and security experts during the drafting. As detailed more below, Cal/OSHA expertise lies in safety and health, not in security and, as is demonstrated in industry and at the Federal level¹, these are distinctly different responsibilities and fields. As illustrated by PRR member organizations – **security departments are responsible for threat management programs which encompass violent threats and incidents, and safety departments are responsible for EHS programs which includes workplace safety and health.** During the drafting of these comments as well as our previous written comments, PRR consulted with security personnel and experts. In addition, PRR member organizations actively participated and contributed at advisory committee meetings. We believe that their perspective and participation is critical to drafting an effective rule that applies to all industries. We are concerned, however, that this security perspective may be interpreted as an “employer” stakeholder. While we do not believe that is an accurate point of

¹ The Department of Homeland Security (DHS) is the Federal Agency responsible for security in the U.S.; The Transportation Security Administration (TSA) is responsible for security at airports and on airplanes, including regulatory requirements, whereas the Federal Aviation Administration (FAA) is responsible for the safety of passengers on the aircraft, including regulatory requirements.

view, and will continue to support security expert recommendations, we also encourage the Division, if it has not done so already, to seek independent security experts to help the safety engineers drafting this rule.

Overarching Concern

Workplace violence incidents are managed by security departments in industry under a threat management program because the policies, procedures, and successful strategies are based in law enforcement and security protocols. This is unlike other health and safety standards - other Cal/OSHA standards where industry best practices are known and may be audited for compliance, a workplace violence standard for general industry would require an inspector to make an independent interpretation of the facts of a security incident and determination if a business adequately responded to the threat. This is a duty that aligns with a law enforcement detective not a health and safety auditor. **Prior to a final draft being proposed, we believe that the Division needs to define its intention on how such a standard would be enforced.** If the intent is for Cal/OSHA, during an inspection, to verify elements of the standard are in place (i.e., the Plan, training, and recordkeeping), then this should be clearly delineated prior to any Board action. However, if the intent is for the inspector to review and decide if an *investigation* was complete and if the corrective action taken was sufficient to protect an employee from a continuing threat, then we urge the Division to address and share how inspectors will be trained and qualified to, in essence, make law enforcement decisions. **By taking on this additional authority to determine compliance with security specific procedures, Cal/OSHA will, in turn, assume a responsibility for the outcomes and potentially future actions.**

Second, for any comprehensive review by a Cal/OSHA inspector to take place, the full understanding of the facts and circumstances surrounding an incident must be known. This requires Cal/OSHA to insert itself into an investigation. It is important to point out that law enforcement agencies do not engage unless a law has been broken and those agencies make the determination if, and how, to respond to incidents. To be successful, the Cal/OSHA inspector must have a firm understanding of various law enforcement codes to determine if a law enforcement agency should have been called and if agents properly responded. **If the incident does not rise to a level requiring law enforcement intervention, it is important for industry to understand how Cal/OSHA will make the determination that an internal company disciplinary action for a security incident was sufficient or not.** These overarching issues need to be discussed before any final draft is proposed and a standard is adopted.

Specific Comments

The following include concerns, recommendations, and support for multiple elements of the proposed Workplace Violence Prevention Standard. Our comments follow the sections in the proposed draft. Recommendations for added language are in **green**, and recommendations to remove language are in **red**.

I. **§3343 (a) Scope**

A. PRR Concern

PRR is concerned that the rule is not clear in that employees working remotely or from home are not covered by this rule. Employers should not be responsible for investigating or documenting violent incidents that occur outside of an employer’s control or the well-established understanding of “place of employment”.

B. PRR Recommendation

To alleviate this concern and clarify the applicability of the rule, PRR suggests adding language that aligns with the COVID-19 Prevention standard §3205 (a)(1) – (2). In place of the reference to §5199 in the COVID-19 standard, this rule should include an exception for employees subject to §3342 Violence Prevention in Health Care.

II. **§3343 (b) Definitions**

1. **(b)(2) “Threat of Violence”**

A. PRR Concern

The current definition does not require the statement or conduct to be violent in nature. The definition itself could be construed to include safety related issues such as Personal Protective Equipment (PPE) failing, and procedures not being followed that lead to the employee fearing for their safety. We do not think that this is the intent of the definition, but it is simply not a clear definition. By lacking clarity it does not distinguish between a safety threat and a security threat. By nature, safety threats are not intentional and security threats are.

Despite previous opposition to address intent in the definition of threat of violence, intent is paramount to determine if a threat meets the threshold of being an actual workplace violence *incident* and, in turn, needs to be investigated and recorded.

Ironically, the word “violence” is defined as the intent to cause harm²; if intent is considered in the phrase “threat of violence”, it should be included in how the definition is applied. The Division has stated³ that intent was not included in the definition because intent is not always clear and a mentally ill patient could be violent and hurt someone without intending to do so. Some stakeholders who were opposed to including intent argued that if the worker is injured it does not matter if there was intent and used the example of an autistic student who may not intend to hurt someone. We agree with them. However, it is important to point out that these examples are not relevant to defining *threats* of violence because, in both, the victim being injured would ensure the event is classified as a workplace violence incident. We also agree that it can be difficult to determine intent but there needs to be some threshold to establish when a threat is credible and could result in *violence* and not simply a safety incident or misunderstanding.

For example, a member shared that an employee reported that they overheard two other workers arguing and one aggressively said to the other, “I’m going to kick your ass.” The organization investigated the situation and determined that the two workers were friends and although they were aggressively speaking, he was joking; he had no intention to hurt his colleague.

PRR continues to believe that this definition needs to be revised and the inclusion of “a reasonable possibility” does provide the needed clarity. Again, this is an opportunity to clarify the language that will impact every employer in the State - the argument that this definition is in the health care rule is not an argument based in health and safety.

As drafted, all statements and conduct that have no other purpose but result in a person feeling stress because they feared for their safety and *may get hurt* must be documented and, in turn, classified as a workplace violence incident. This is not practical or in alignment with the intent of the rule. This rule, as drafted, equates a perceived threat to a violent act, in addition to holding employers accountable for managing invalid threats and violent acts in the same manner. This approach by Cal/OSHA continues to raise industry concern and should be addressed.

² Google search results of *definition of violence*: “behavior involving physical force intended to hurt, damage, or kill someone or something”

(<https://www.google.com/search?q=definition+of+violence&oq=definition+of+violence&aqs=chrome..69i57j0i51219.3460j1j15&sourceid=chrome&ie=UTF-8>)

³ “Cal/OSHA Advisory Meeting Workplace Violence Prevention in General Industry Minutes” Division of Occupational Safety and Health, 27 January 2018, p. 6. [Minutes](#)

Also, PRR does not support the word “physically” being removed from the definition. Doing so blurs the line between workplace harassment and workplace violence making it unclear for companies who enforce harassment policies and respond to instances. It could also make it unclear when communicating threats to law enforcement. Removing this word makes the definition even more broad and open to interpretation. An example would be when an inappropriate verbal statement made to an employee would be considered harassment whereas a physical threat to an employee would be deemed workplace violence. This is an important distinction for a successful threat management program and also ensures alignment with common security and law enforcement protocols. A physical threat is tangible and measurable; tracking *physical* threats will produce the most useful data for Cal/OSHA and employers working to identify trends and mitigate workplace *injuries* and *fatalities*. The Division should not eliminate the physical element in this definition.

B. PRR Recommendation

PRR recommends that the Division return the word “physically” to the definition of “Threat of Violence” and further define the nature of the threat:

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

2. (b)(3) “Workplace Violence”

A. PRR Concern

PRR is concerned that the definition of workplace violence is overly broad. To be impactful, this rule needs to focus on *actual violent acts* and *credible threats* that are *criminal in nature*. It is these types of threats that could lead to a workplace violence incident; the rest will be noise. Specifically, **including “stress” as a determinant of whether a threat rises to the level of a violent incident will lead to random situations being recorded and dilute the actual incidents that could result in employee harm.** PRR members have robust threat management programs with zero-tolerance policies; they conduct investigations *on every report of an “unfriendly” incident*. That does not mean that every report or situation is a workplace violence incident – the investigation determines if the situation is an actual threat of violence, is credible, and should be

considered a workplace violence *incident*. The proposed definition, however, creates an openness of interpretation that may lead to insignificant incidences being recorded.

Also, this definition conflates a violent act and a perceived threat. Moreover, the requirement to document all of these situations implies that they need to be responded to and managed in the same manner. Effective threat management programs consider severity, yet this rule does not. This will, in turn, not only result in inspectors determining whether the employer handled a stressful situation appropriately, which is a waste of Cal/OSHA resources, it also runs the risk of employers responding to reports of stress in the same way they respond to violent acts in order to demonstrate compliance with this rule. This is a waste of employer resources and will not improve the safety of workers or help identify trends in violent incidents – both of which is the purpose of this rule. As mentioned above, some threats will fall in the category of harassment, others bullying, some will be managed by an employer's ethics committee and, the truth is, others will be deemed noncredible. **Employers should not record, and Cal/OSHA should not be concerned with 50 insignificant incidents when it is two or three that could lead to a significant act of workplace violence.**

For example, one member shared that an employee reported that someone was staring at them for more than 30 seconds "with crazy eyes" causing them stress. The employee was concerned that the person was a threat to the workplace. Following the investigation, the security team determined that the person was trying to read the clock on the wall and was not looking at the employee; it was not a credible threat. Based on this definition, that incident would need to be recorded, but it would not contribute to improving safety at the workplace or illustrate accurate trends of workplace violence.

There are also varying degrees of stress, and some jobs are inherently more stressful than others. Unlike common stressors that can be identified in healthcare, determining baseline stress that could be considered an actual incident is not possible when evaluating every employer and industry. Many employees work in stressful environments and are subject to rude customers and comments that may sound threatening but would be considered "empty threats" with no element of criminal intent. In addition, empty threats would not satisfy the elements of the California Penal Code 415 (disturbing the peace) or 422 (criminal threat) and law enforcement would be unable to pursue. Instead of being handled as a security incident, situations like these that induce stress should be handled as administrative issues - the employer can offer mental health support, perform corrective actions with the customer or co-worker, and possibly relocate the worker or adjust job duties.

Occupation or geographic location also plays a role in the types of encounters that can be expected and helps determine the severity of the incident. For example, a security guard required to limit people entering a building is more likely to hear strong words and be confronted by angry patrons more often than a receptionist at a biopharmaceutical facility. The Division should consider these factors when determining the qualifiers of a workplace violence incident. For the general industry regulation to produce useful data and information, the data being input must be relevant.

Another common example is a customer service representative working in a call center or retail store. Customers can, and do, get angry and make inappropriate statements that may be considered threats by the employee and may cause the employee additional stress. However, these situations do not warrant a label of workplace violence.

To be clear, PRR does not think that situations described in our examples should be ignored or discounted by the employer, but they do not meet what we believe is the intent of this rule; they are not incidents of workplace violence and should not be classified as such and tallied on a Log for data collection purposes. Doing so would dilute legitimate data and give an inaccurate indication of the level of safety at that workplace. As stated above, it is these types of incidents that will take Cal/OSHA and the employer away from focusing on actual incidents and trends that lead to credible and harmful workplace violence incidents.

It is also important to address that post-COVID-19, PRR members are seeing higher levels of stress, angst, and emotional anxiety in their workforces. Employees are becoming more easily triggered and the likelihood that on-the-job encounters lead to stress is increasing. This is a health concern that many PRR members are addressing; however, an employee experiencing stress does not rise to the level of a workplace violence incident.

In addition to mental health and wellness programs, PRR members are also implementing equity and diversity initiatives and programs that encourage and support employees in speaking up. Opening lines of communication is a positive move that benefits the organization and the worker, but it is not always a clean and constructive path. Speaking up and reporting threats is supported and encouraged by PRR members, but the context of the situation may lead to an ethics investigation which may not be managed under the company's threat management program. Again, the situation is worth investigating and the behavior must be mitigated but it must also be conducted

by the appropriate internal team (i.e., Human Resources; Diversity and Inclusion). Moreover, the details of the incident contain layers of sensitivity that are not appropriate for Cal/OSHA to evaluate and needs to be respected.

B. PRR Recommendation

As stated above, PRR understands the Division’s intent to maintain alignment with definitions in the Violence Prevention in Health Care standard. However, we do not think this goal should limit actual improvements to the general industry rule. As previously recommended in our comments submitted in March and December of 2018, we strongly encourage the Division to consider aligning with the recognized industry definitions of “threat of violence” and “workplace violence” used by the American National Standards Institute (ANSI) and the American Society for Industrial Security (ASIS)⁴:

“Threat of violence: 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”

“Workplace violence: a spectrum of behaviors including overt acts of violence, threats, and other conduct that generates a reasonable concern for safety from violence, where a nexus exists between the behavior and the physical safety of employees from any internal or external relationship.”

It is important for this rule to identify that there is a pathway to violence and consider the full spectrum of behaviors, not just overt physical acts, so that potential threats can be detected and mitigated early; these definitions do just that. However, it is not clear why the Division is opposed to using definitions that meet this goal and have already been vetted and established. It is also worth noting that by removing the word “physically” from the definition of threat of violence, the definition no longer aligns with the healthcare rule.

We also encourage the Division to consider and include definitions that align with law enforcement and legal burdens. Specifically, elements of criminal threats should be incorporated into the rule. However, since the Division has not heeded these recommendations in the past, we offer an additional minor suggestion that closely aligns with the health care rule.

⁴ ANSI/ASIS Workplace Violence Prevention and Intervention AA-2020

(b)(3)(A) The threat of violence or use of physical force against an employee that results in, or has a high likelihood of resulting in injury or psychological trauma, ~~or stress,~~ regardless of whether the employee sustains an injury.

Also, there seems to be a typo in the Exception.

EXCEPTION: The term workplace violence does not include lawful acts of self-defense...or self-inflicted harm that does not involve violence...

III. **§3343 (c) Workplace Violence Prevention Plan**

A. PRR Concern

The requirement for the plan to be available at “all times” is not reasonable. Plans that are incorporated in the Injury and Illness Prevention Program (IIPP, §3203), as supported by the proposed rule, should have the same requirements for availability as the IIPP. The concern stems from the fact that facilities and locations for general industry are wide-spread and diverse. Some field workers never enter a physical site and requiring them to have a copy in their truck or consistent access to a website is simply unreasonable. We understand that this language aligns with the healthcare regulation, but general industry “places of employment” are vastly different than healthcare facilities.

B. Recommendation

The plan should be available in accordance with the IIPP requirements.

IV. **(d) Violent Incident Log**

A. PRR Concern

PRR supports the Division’s deletion of specific details of the incident in the Log, specifically, the deletions in (d)(1), (3), and (4). We believe this will prevent unintended security and privacy risks highlighted in our previous comments from 2018 and we appreciate the Division’s acknowledgement of these genuine concerns. Most of the remaining information to be included on the Log supports the ability to track and trend data and incidents. PRR is optimistic that this information will improve the safety of workers and reduce workplace violence incidents; however, the following concerns remain:

1. As stated above, the definition of threat of violence and workplace violence is extremely broad. Maintaining these definitions will result in recording incidents that may not meet the threshold of being an *actual* workplace violence incident or violent threat. It is our understanding that the purpose of the Log is to identify trends and ensure that employers are tracking incidents so that threats can be mitigated before they become incidents, ultimately reducing workplace violence *injuries* and *fatalities*. PRR absolutely supports this intent but is concerned that without better defining and narrowing the scope of what needs to be recorded, the data will not yield the results that the Division is seeking.
2. The Log does not differentiate between a threat of violence and a violent act which is highly concerning. By conflating these situations, the Log indicates that the situations are equal. It also implies that the employer’s responsibility to respond and manage these very different situations should be the same. To help alleviate this issue and improve the ability to accurately trend the data, severity of the situation needs to be reflected in any type of Log. The Division should consider the negative impact of recording threats and assaults in the same manner.
3. In addition to diluting the data, this type of Log will not distinguish workplaces that are actually high-risk from employers who are extra cautious with robust security programs. For example, as mentioned above, many PRR members investigate *every reported incident*. This does not imply that the organization is unsafe because, again, every reported incident and threat is not credible and does not meet the threshold of being a workplace violence incident. In actuality, it illustrates that the employer is dedicated to the safety of their workers. However, if review and sharing of this Log with employees and their representatives leads to false assumptions that the employer has failed in reducing employee risk, it has also failed at the intent of the regulation. This could also lead to employers reducing the number of investigations and under-reporting. Incidents on the Log should reflect serious situations that warrant attention and tracking.
4. The information on the Log could be misinterpreted by employees and employee representatives reviewing the Log. For example, a PRR member has experienced the unfortunate truth that the employee(s) involved in the situation, because of their personal involvement, may never be satisfied with how the company handled the situation. It does not mean, however, that the employer inappropriately investigated and responded. These situations become emotionally charged and it can be difficult for involved parties to objectively review final reports.

The following are major concerns that are specific to section (d)(4), consequences of the incident.

5. Releasing information about security or law enforcements' response and the actions taken to protect employees from a continuing threat could expose a "roadmap" of effective responses that could be exploited by future perpetrators. It may also indicate what types of behavior and situations would or would not trigger a law enforcement response. Many times, the threat of a law enforcement action may prove sufficient to deter threatening behavior. Documenting that law enforcement did not respond would only embolden some in acting. Releasing *any* investigative details along with actions taken poses additional risk. While the victim should be aware that action was taken and that the threat was addressed, exposing the specifics to the investigation and steps taken, now or in the future, to a larger audience may not be the best course for a successful outcome.
6. Making this information available to all employees and their representatives may jeopardize the investigation and could result in an escalation of the danger. Releasing information contained in the Log could raise the visibility of the incident and lead to unauthorized and detrimental actions being taken by others who may not know or understand the full context of the incident.
7. Finally, regarding (d)(4) PRR thinks it is important that California law agencies 1) are made aware that Cal/OSHA inspectors will be reviewing and evaluating agency response efforts, and 2) are asked if it is appropriate that details of an investigation are shared with employees and their representatives, thus becoming public. If Cal/OSHA has not informed, or been advised by these agencies on this element, PRR advises that an effort is made prior to proposing a final draft that includes such a requirement.

In addition to our specific concerns, it is not clear why the Division needs this information and what the inspector will do with the information in (d)(4). As highlighted in our **Overarching Concern** above, PRR members are highly concerned with inspectors, who may not be trained in law enforcement and security processes and procedures, using the information contained in investigative reports to determine if the employer is in compliance with the rule. **Moreover, we question the appropriateness of Cal/OSHA, an agency with expertise in health and safety, to influence decisions and protocols firmly rooted in the security realm-a realm that is vastly different than safety.**

8. PRR is still concerned with the requirement to include the name of the person completing the Log in (d)(5). As highlighted in PRR's previous comments from 2018, any

name on a document as sensitive as a "Violent Incident Log" puts that person at risk. It is not clear what the benefit is for the Division to have this information. In many cases, completion of the Log would be for administrative purposes. The person completing the document should not be held accountable for the employer's Plan or decisions made following a workplace violence incident. Also, this is specific information that can be determined during an inspection.

9. We support the "exception" that employers with no workplace violence incidents in the past five years do not need to maintain a Log. We also support, what we interpret is the intent of this exception, to limit the burden of the Log on low-risk employers/industries. However, given the broad scope of the definition of workplace violence (i.e., "stress") and threat of violence expanded to remove "physically," we do not believe this exception will be impactful. If workplace violence incidents include all statements and conduct that produce stress, a majority of industry workplaces will have a recordable incident more often than once every five years. By revising the definitions as suggested in these comments, this exception may indeed reduce the burden of this requirement on low-risk employers.

B. PRR Recommendation

1. PRR recommends that the following open narrative text fields be removed from the Log and/or replaced with a check box or yes/no field:

(4) Consequences of the incident, including:

(A) Whether security or ~~was contacted and whether~~ law enforcement was contacted ~~and their response;~~

~~(B) Actions taken to protect employees from a continuing threat or from any other hazards identified as a result of the incident.~~

~~(5) Information about the person completing the log, including their name, job title, and the date completed.~~

If the decision is made to include these details, PRR requests clarification on why this information is necessary, how the Division and inspectors intend to use this information and what, if any, special training inspectors will receive in order to make the determination that employers and law enforcement followed proper security protocols.

2. PRR also suggests that the Division clarify the language in the rule so that existing internal Information Management Systems (ISMS), currently used to mitigate security threats and maintain data, can be leveraged by employers for reporting and tracking.

This will prevent the burden of redundant work, effort, and increased cost created by the requirement to hire additional personnel to manage another system. To support this, we recommend the following change:

(d) Violent Incident Log. The employer shall ~~record information in a violent incident log (Log) about every workplace violence incident~~ maintain a system of record for criminal threats or acts of violence.

The suggested language above will also clarify the types of threats and acts that must be recorded.

V. **(e) Training**

In previous comments PRR expressed that one of our major concerns was the burden for employers with robust programs addressing workplace violence already in place to retrain employees simply because Cal/OSHA issued a regulation. We appreciate the Division's consideration of this challenge and support the proposed edits that will reduce the burden and cost of retraining.

In addition, we appreciate the Division's acknowledgement that not all workplaces exhibit the same risks and those who have not had an incident in the previous five years are only required to provide general awareness training. However, as stated above, because the definitions of threat of violence and workplace violence are currently too broad, this delineation will not be effectual. If the Division tightens the scope of the definitions, we do believe these training requirements are appropriate and practical.

VI. **(f) Recordkeeping**

PRR supports the requirement for employers to provide all records to the *Chief, or designated representative*, for review and the Division's ability to collect *Logs* for statistical purposes. However, we are highly concerned and do not support investigative reports to be reviewed and collected by inspectors for the purpose of determining compliance with this rule. The results of investigations are influenced by many factors, one primarily being law enforcement. OSHA inspectors are trained to determine compliance with employer duties related to occupational safety and health regulations, NOT in security events.

In addition, the copying of these documents by the Division, or Chief, may subject them to the California Privacy Rights Act (CPRA). Despite removing Personally Identifiable Information (PII) from these reports prior to releasing them under the CPRA, indirect

identifiers in those documents may expose all parties involved in the investigation. This is a major privacy concern and potential safety risk to the individuals involved in the investigation⁵. If the Division intends to collect investigative documents, Cal/OSHA should ensure the documents would not be subject to release under CPRA at an absolute minimum. In addition, California law enforcement agencies should be consulted on the appropriateness of investigative details that they are involved in, including Agency response and protocols, becoming publicly accessible.

Closing

PRR continues to support and encourage employers in California, particularly those in industries with a higher risk of workplace violence incidents, to have threat management programs in place – policies appropriate to the organization, a process to identify and report threatening behavior and acts of violence, employee education and resources, thorough investigations, and follow-up are central to a safe work environment. We also support documenting violent threats and behavior in order to track and mitigate potential incidents. Paramount to all of this is adequate protection of worker privacy and protection of company security protocols to prevent retaliatory actions and subsequent violent incidents that may occur if the details of the investigation are released. To that end, we will continue to work with the Division to craft a workplace violence prevention standard that is clear and effective in preventing violent incidents and deaths.

We hope that PRR's written comments and specific recommendations are helpful and provide additional insight to the Division. We look forward to more opportunities, including the upcoming advisory committee meeting to work with the Division and provide feedback on draft language, and Cal/OSHA's strategy to mitigate workplace violence incidents in the workplace.

Sincerely,



Helen Cleary
Director
Phylmar Regulatory Roundtable

CC: Jeff Killip jkillip@dir.ca.gov
Eric Berg eberg@dir.ca.gov

⁵ See PRR written comments to Federal OSHA on its recently proposed electronic recordkeeping rule for more information on how indirect identifiers can be linked to identify individuals and why public release of sensitive documents with indirect identifiers is a major privacy risk: <https://www.regulations.gov/comment/OSHA-2021-0006-0094>.