

7/15/22
Kevin Graulich
Senior Safety Engineer
DOSH Research and Standard Unit
RE: CAL/OSHA Gen. Industry WVPP

Mr. Graulich,

All of us employed under the scope of the DIR and CAL/OSHA regulations have interest in the WVPP draft language, suggestions submitted related to the Plan, and how such regulation could affect navigating circumstances and situations in our workplaces and environments. The insightful draft recommendations from individuals and organizations such as WorkSafe are appreciated, especially the California Nurses Association's detailed proposal.

As a Union worker in the distribution and supply chain with numerous stops per shift, I work in constant contact and communication with others in various fields and environments; those "boots on the ground", essential workers, and others who would be handed the Plan from a variety of employers. Whether a remote worker, in an office, out in the field, in traffic or a warehouse, abusive customer or manager encounters, that "quality time" with people who direct their personal stresses at workers; a lot of interaction happens out there on a daily basis which is open to risk of escalating into incidents. We know of events and tragedies that make headlines, however workplace incidents or altercations can(often) erupt from numerous daily situations workers experience much more commonly, presenting prevention opportunities which could be covered under the proposed standard, including watching out for ourselves and each other as security staff is not always nearby.

I appreciate the opportunity to review the Draft and offer suggestions from a worker's perspective. I noticed the Draft revision language for definitions and recordkeeping criteria, but felt more could be applied to actual prevention as reporting usually happens after an incident of some type and scale. There are daily examples in the field and on shop floors when rising tensions are predictable in response to circumstances and/or behaviors, and often incidents escalate quickly in response to stresses in those situations. Behaviors like bullying, intimidation or threats can provoke an altercation; sexual harassment could be anticipated to result in someone being slapped, or if continuing or unresolved, could result in a partner or family member feeling compelled to visit the workplace for a "chat", etc. (A recent example from an Undercover Boss episode; <https://www.youtube.com/watch?v=JsCIdIG6DNE>)

(b) Definitions.

~~"Chief" means the Chief of the Division of Occupational Safety and Health of the Department of Industrial Relations, or his or her designated representative.~~

~~"Division" means the Division of Occupational Safety and Health of the Department of Industrial Relations.~~

- (1) "Injury" means an injury to an employee that meets the recording criteria listed in title 8, section 14300.7(b)(1), and the reporting criteria in T8 14001 and 342.
- (2) "Threat of violence" means a statement or conduct that serves no legitimate purpose and 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~~ ,or causes a person to reasonably feel or suspect an impending need to act in self-defense or in defense of others.

“Union” representative” means a recognized or certified collective bargaining agent representing the employer’s employees.

(3) *“Employee representative” means a recognized collective bargaining agent, or designated employee selected by the affected employees at/of each work group or location.*

(4) “Workplace violence” means any act of violence or threat of violence that occurs in a place of employment *or wherever employees may be during the course of employment related time.* ~~The term workplace violence shall not include lawful acts of self-defense or defense of others.~~ *Acts or behaviors of workplace violence may include and result in arrest and/or prosecution under additional or enhanced charges for the use of weapons, behavior, or other relevant considerations according to applicable laws (E.g., brandishing or use of a firearm, assault, harassment, hate crime, etc.).* Workplace violence includes the following:

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

(1) Behavior against an employee that is likely to incite, provoke, encourage, contribute or lead to a “Workplace Violence Type” in Section 3343(b)(3)(c); abusive conduct such as bullying, threats, intimidation, harassment, or other causes of psychological trauma or stress.

(B) An incident involving ~~the a~~ threat or use of a ~~firearm or other~~ dangerous weapon, including the use of common objects as weapons, regardless of whether the employee sustains an injury;

(C) Four workplace violence types:

1. "Type 1 violence" means workplace violence committed by a person who has no legitimate business at the worksite, and includes violent acts by anyone who enters the workplace *or approaches worker(s)* with the intent to commit a crime.
2. "Type 2 violence" means workplace violence directed at employees by customers, clients, patients, students, inmates, or visitors.
3. "Type 3 violence" means workplace violence against an employee by a present or former employee, supervisor, or manager.
4. "Type 4 violence" means workplace violence committed in the workplace by someone who does not work there, but has or is known to have had a personal relationship with an employee.

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

(5) “Retaliation” as defined by the DIR, as in Labor Code (6310, etc.)

(6) “Recordkeeping and Reporting” shall define requirements of Employers for “Recordkeeping” and “Reporting” to be consistent with T8 342; 3203; 14001 and 14003.7

(7) “Workplace” means location, area, environment, anywhere that employees might be located in relationship to employment related time.

Sometimes we just know when a situation feels “off”; we can often anticipate when a set of circumstances like environmental conditions, interactions or suspicious activity creates a situation that might be better avoided or rescheduled. As opposed to being told or expecting to be told, “just get it done” or “deal with it”, it should be recognized that workers may have to excuse themselves from a situation, and should have a reasonable expectation that they may do so. Workers, and Employers, should be equipped with the understanding it is the workers are who are onsite and “in the moment” as situations or circumstances

present, develop, and begin to escalate. Workers should have the right not just for self-defense, but also and arguably more importantly, the ability to act when it becomes apparent a situation is sketchy, a potential incident, or likely to escalate. If this is a Prevention plan, I would like to suggest clearer information and training to better enable employees to evade or act to deter such scenarios or incidents PRIOR to any potential or impending escalation of events, without fear of reprisals. Elimination of hazard first, and then seek Administrative review; workers simply may suddenly have to remove themselves from a situation, or quickly develop an exit strategy if possible. The “Customer” (or boss) is not always right, and “We Reserve the Right to Refuse Service” might not be a bad policy message to incorporate into the Plans.

(c) Workplace Violence Prevention Plan. The employer shall establish, implement, and maintain an effective workplace violence prevention plan (Plan). The Plan shall be in writing and shall be available to employees and authorized employee representatives at all times. The written Plan may be incorporated into the written Injury and Illness Prevention Program (IIPP) required by ~~title 8, section 3203~~ or maintained as a separate document, and shall include all of the following elements:

- (1) Names or job titles of the persons responsible for implementing the Plan.
- (2) Effective procedures to obtain the active involvement of employees and authorized employee ~~their union~~ representatives in developing and implementing the Plan, including their participation in identifying, evaluating, and correcting workplace violence hazards as well as contributing behavior, factors, threatening or abusive conduct; designing and implementing training; and reporting and investigating workplace violence incidents, abusive conduct, and contributing factors or behaviors.
- (3) Methods the employer will use to coordinate implementation of the Plan with other employers when applicable, as set forth in subsections (c)(3)(A) and (c)(3)(B). ~~These methods shall ensure that all employees are provided the training required by subsection (c).~~
 - (A) ~~Employers in a direct contracting relationship to perform work at a multi-employer worksite shall coordinate with each other.~~
 - (B) ~~Employers in a dual employer relationship, where one or more employees are employed by both employers at the same time to perform work at the worksite, shall coordinate with each other.~~
- (4) Effective procedures for the employer to accept and respond to reports of workplace violence, abusive conduct or behaviors, and to prohibit retaliation against an employee who makes such a report.
 - (A) This shall include procedures or allowances for communication AFTER employees may act, without fear of reprisal, by de-escalation attempts or removing themselves from any unsafe or imminent hazard when circumstances are or become apparent.
- (5) Procedures to ensure that supervisory and non-supervisory employees comply with the Plan in accordance with title 8, section 3203(a)(2).
 - (A) Procedures or provisions for employees to act in prevention, without fear of reprisal, by removing themselves from any unsafe or imminent hazard when circumstances are or become apparent.
- (6) Procedures to communicate with employees regarding workplace violence matters including:
 - (A) How an employee can report a violent incident, threat, or other workplace violence concern without fear of reprisal;
 - (B) How employee concerns will be investigated, and how employees will be informed of the results of the investigation and any corrective actions to be taken;
- (7) Procedures to respond to workplace violence emergencies, ~~including active shooter threats~~:
 - (A) How employees will be alerted about workplace violence emergencies;

(B) Evacuation or sheltering plans that are appropriate and feasible for the worksite, employee location, or environment;

(C) Applicable P-procedures to obtain help from staff, if any, assigned to respond to workplace violence emergencies; security personnel, if any; or the appropriate law enforcement agency.

(8) Procedures to develop and provide the training required in subsection (e).

(9) Procedures to identify 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.

(10) Procedures to correct workplace violence hazards in a timely manner in accordance with title 8, section 3203(a)(6).

(A) Procedures or provisions for employees to act in prevention, without fear of reprisal, by removing themselves from any unsafe or imminent hazard before circumstances may escalate or when circumstances are being realized.

(11) Procedures for post-incident response and investigation.

(12) Procedures to review the effectiveness of the Plan periodically and after ~~any~~ any workplace violence incident ~~that results in an injury~~, and to revise the Plan as needed.

(d) Violent Incident Log. The employer shall record information in a violent incident log (Log) about every workplace violence incident and employee report ~~and post-incident response and investigation performed in accordance with subsection (e)(11)~~. Information about each incident shall be based on information solicited from the employees who experienced the workplace violence, any witness statements and investigation findings. The employer shall omit any element of personal identifying information sufficient to allow identification of any person involved in a violent incident, such as the person's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the person's identity. The Log shall be reviewed during the periodic reviews of the Plan required in subsection (c)(12). The information recorded in the Log shall include, ~~but not necessarily be limited to:~~

(1) Date, time, and ~~specific~~ location of the incident;

(2) The workplace violence type or types, as defined in subsection (b), involved in the incident (for example, "Type 1," "Type 2," or "Type 3 and Type 4");

(3) Description of the incident ~~Nature of the incident, including whether it involved:~~

~~(A) Physical attack, including biting, choking, grabbing, hair pulling, kicking, punching, slapping, pushing, pulling, scratching, or spitting;~~

~~(B) Attack with a weapon or object, including a gun, knife, or other object;~~

~~(C) Threat of physical force or threat of the use of a weapon or other object;~~

~~(D) Sexual assault or threat, including rape/attempted rape, physical display, or unwanted verbal/physical sexual contact; (E) Animal attack; (F) Other.~~

(4) Consequences of the incident, including:

~~(A) Whether medical treatment was provided to the employee;~~

~~(B) Who, if anyone, provided necessary assistance to conclude the incident;~~

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

(B) ~~Amount of lost time from work, if any;~~

(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.

EXCEPTION: A log is not required when an employer has had no workplace violence incidents in the past five years.

(e) Training. The employer shall provide effective training to employees as specified in subsections (e)(1) and (e)(2) ~~that addresses the workplace violence risks that employees are reasonably anticipated to encounter in their jobs.~~ Training *shall be consistent with or greater than as required in T8 3203*, and material appropriate in content and vocabulary to the educational level, literacy, and language of employees shall be used.

~~(1) All employees 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.~~

- (1) The employer shall provide employees with ~~general awareness~~ *effective* training on workplace violence that includes: the employer's Plan, how to obtain a copy of the employer's Plan, how to participate in development and implementation of the employer's Plan, the definitions and requirements in this section *the Plan*, and how to report workplace violence incidents or concerns to the employer without fear of reprisal.

(A) Training shall be in accordance or greater than required in T8 3203, and include Sections 3343(b)(c)(d), and general awareness of 3343(e), (f).

(B) Written copies of the Plan shall be readily available and provided at no cost to employees and authorized representatives.

- (2) In addition, employers who had a workplace violence incident within the previous 5 years shall provide the following training to employees:

(A) ~~Initial training shall address the w~~Workplace violence hazards specific to the employees' jobs, the corrective measures the employer has implemented, ~~an explanation of the employer's Plan,~~ how to seek assistance to prevent or respond to violence, and strategies to avoid physical harm, *hazardous situations, and potential workplace violence incidents without fear of reprisal* ~~and how to report workplace violence incidents or concerns to the employer without fear of reprisal.~~

(B) The violent incident log required by subsection (d) and how to obtain copies of records required by subsections (f)(1), (f)(2), and (f)(3).

- (3) Additional training shall be provided when a new or previously unrecognized workplace violence hazard has been identified, *or when a deficiency is observed or becomes apparent*. The additional training may be limited to addressing the new workplace violence hazard.

I also noticed "Recordkeeping" is in the Draft proposal, similar to OSHA 300 logs, but "Reporting" (to the Division) appears absent; perhaps because if an incident results in injury it may be reportable per CAL/OSHA, but maybe there could be criteria included for incidents which are Recordable and also Reportable. I do not understand why there would be a waiting period of up to 15 days to provide the records to employees or representatives. The objective being prevention, if someone is sensing or looking to review records for any pattern in consideration of reporting a potential incident, there shouldn't be any waiting period.

(f) Recordkeeping and Reporting.

- (1) Records of workplace violence hazard identification, evaluation, and correction shall be created, signed by the person responsible, and maintained for a minimum of one year.
- (2) Training records shall be created, signed by the person responsible, and maintained for a minimum of one year and include training dates, contents or a summary of the training sessions, names and qualifications of persons conducting the training, and names and job titles of all persons attending the training sessions.
- (3) Violent incident logs required by subsection (d) shall be maintained, signed by the person responsible for the Plan, and available for a minimum of five years.
- (4) Records of workplace violence incident investigations conducted pursuant to subsection (c)(11) shall be signed by the person responsible and maintained for a minimum of five years. These records shall not contain “medical information” as defined by Civil Code Section 56.05(j).
- (5) All records required by subsection (f) shall be made available to the Division Chief on request, for examination and copying.
- (6) All records required by subsections (f)(1), (f)(2), and (f)(3) shall be made available to employees and their representatives, ~~on request~~, for examination and or copying ~~within 15 calendar days of a request~~. (* a waiting period for records when someone is sensing or looking to review or show a pattern in consideration of reporting a potential incident or hazard? There should be no waiting period for access to workplace violence records if Prevention is the scope)

(7) REPORTING: Workplace Violence Incidents, Logs or records required to be reported to the Division.

(A) When should Workplace Violence Logs be Reported to the Division?

(B) What and how much information should be Reported to the Division?

Respectfully, for WVPP regulations to seemingly focus on reporting and recordkeeping of incidents after an event, potentially misses prevention opportunities to encourage affected employees to address behaviors that indicate or contribute as causative factors; it seems reasonable to say that there are times when things are done or said that could or are likely to provoke, instigate, or lead to a reaction. Workers need options, and it would be beneficial to amend the WVP Plan Draft to include language or criteria to add definitions and address inappropriate behaviors and/or abusive conduct that unjustly aggravates stresses & tensions, as well as empowers workers in actual preventative & remedial measures.

Thank you for your consideration,

Steve Miller

5/17/22 WVPP Draft Revisions:

<https://www.dir.ca.gov/dosh/doshreg/Workplace-Violence-in-General-Industry/Discussion-draft-3.pdf>

10/24/18 WVPP Draft Comments:

<https://www.dir.ca.gov/dosh/doshreg/Workplace-Violence-in-General-Industry/Comments-Oct-24-2018.html>