



United Food & Commercial Workers Union

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Mr. 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 Proposal (as released May 17th, 2022)**

Dear Senior Engineer Graulich:

The United Food Commercial Workers Union Western States Council (UFCW) on behalf of its over 180,000 members in the private sector is grateful both for the opportunity to comment on the General Industry Workplace Violence Prevention Discussion Draft Proposal (Proposal), as released May 17th, 2022, and your and the Division's effort to establish generally applicable statewide workplace violence safety standards.

While the Proposal laudably seeks to establish generally applicable statewide workplace violence safety standards, regrettably and respectfully, the Proposal as currently drafted foundationally fails to fulfill its promise of offering meaningful protection from such violence for California's workers. As discussed below and in the submissions of our sibling labor organizations, the flaws in the Proposal arise chiefly from (i) its decision to depart from the time-tested workplace violence safety standards for healthcare workers¹ and (ii) ambiguities and exceptions that, inevitably, will raise doubts about whether violations have occurred and therefore chill needed enforcement.

UFCW looks forward to working collaboratively with the Division and stakeholders on revisions to the Proposal so that it fulfills its promise and potential.

¹ 8 Cal. Code of Reg, section 3342.

THE URGENT NEED FOR MEANINGFUL PROTECTION FROM VIOLENCE AT WORK.

California workers should not have to wake up each morning afraid that they will be assaulted or killed while at work. However, the opposite is true. For far too many Californians, the stress of simply earning a living and providing for a family is inhumanly compounded by a daily terror of being violently attacked while at work.

Both data and experience show their terror is warranted.

As the Occupational Safety and Health Administration observes, violence is the third-leading cause of fatal workplace injuries in the United States. Indeed, over ten percent of the more than five thousand workplace fatalities that occurred 2019, were caused by intentional violence.² An average of 1.7 million workers were victims of violent crime while on-the-job each year from 1993 through 1999 according to the Bureau of Justice Statistics.³

And, not all workers are equally at-risk of violent assault. According to the Bureau of Labor Statistics, 20,870 workers in the private industry experienced trauma from nonfatal workplace violence in 2019 and of these victims nearly 70% were women.⁴

Experience in our post-pandemic world underscores the urgency of worker protection. Over the last several years, reports of workplace violence from our members have skyrocketed. It is now sadly true that most of our members have been the victim of at least one incident of threatened or actual workplace violence and many intolerably experience workplace violence on a regular basis. Our members have been robbed at gunpoint; they've been attacked physically, some to the point of needing to be hospitalized; they've been spat upon by people infected with COVID; they are routinely threatened with violence; at some stores, they deal with homeless individuals, some with severe mental health issues daily, and a few members have been murdered while performing their jobs.

The following real-world experiences of our members from just the Southern California area illustrate the human cost of such violence:

- One incident involved some anti-mask skinheads who went into a Ralphs store in the Mid-Wilshire area of Los Angeles. A security guard allowed the two men to enter the store without masks and then the security called upon the Person in Charge (PIC) of the

² <https://www.osha.gov/workplace-violence>.

³ <https://www.osha.gov/workplace-violence/risk-factors>

⁴ <https://www.cdc.gov/niosh/topics/violence/fastfacts.html>

store at the time to approach the two men. The PIC, who is a Black woman, approached the men and asked them to put on masks or leave the store. They yelled racial epithets at her, gave her a Nazi salute and repeatedly rammed their cart into her cutting and bruising her arm and hand. To defend herself and her coworkers, the PIC sprayed one of the assailants with pepper spray. As a result of this incident, the Company suspended the PIC (who had a long and perfect record of work performance) for violating a rule against having pepper spray at work.

- In another incident, two men came into the Rite Aid store in Eagle Rock to steal beer. As they were leaving the store with several cases of beer, the cashier approached them to ask them to pay for the beer. One of the men pulled out a gun and shot the cashier in the chest. The cashier died in the arms of his coworker while they waited for an ambulance to arrive.
- Several Rite Aid members were physically attacked by someone with severe mental health issues causing them to suffer severe injuries requiring hospitalization.
- On Super Bowl Sunday Feb 13, 2022, a security guard was shot at point blank range by a customer who was later deemed intoxicated and being disruptive in the store. The customer was yelling obscenities to cashiers when the security guard had asked him to leave and that is when the customer shot him.
- A night crew member at a Ralphs was viciously attacked when he opened the door at 3am to let in another member. He was beaten onto the ground and believes if a coworker did not pull the attacker off of him, he'd be dead.
- A customer spit in a shop steward's face for asking him to wear a mask. During the mask mandate confrontations between employees and customers refusing to wear a mask were an hourly occurrence. Again, grocery clerks were enforcing policies and laws without training and assistance and were constant targets of harassment and violence.
- A member at Vons in Echo Park was attacked by a customer who was shoplifting and beaten up.
- A member was followed by a drunk driver who wrongfully accused the employee of cutting that driver off before coming to work. During the incident, the driver used racial epithets and threatened violence against the employee. The customer was not dealt with by management and is still allowed to shop at the store.

- A pharmacist was working overnight at a 24-hour pharmacy. Around 9:30pm or so someone jumped over the pharmacy counter and beat her up. She said it felt like he hit her 1000 times. She suffered major injury to her face and eyes and was out of work for close to 6 months recovering from her injuries and trauma.

All of this underscores the need for an exception-free, easily enforceable Proposal grounded in analogous precedent.

THERE IS NO REASON IN LOGIC OR POLICY WHY RETAIL WORKERS SHOULD ENJOY LESS PROTECTION FROM BEING VIOLENTLY ASSAULTED ON THE JOB THAN HEALTH CARE WORKERS.

The trailhead for addressing workplace violence in California must be the standard currently in place for health care workers. The Proposal does not embrace it. Respectfully, there is no reason in logic or policy to depart at the outset from a policy that already exists and that has successfully embraced the basics of a successful worker protection program. In contrast, the IIPP process has self-evidently failed to protect workers. As will be seen, many of the many substantial deficiencies in the Proposal can be addressed simply by adopting approaches already in-use in healthcare; approaches that are common-sense based and not tied to the healthcare setting.

With this in mind, we respectfully turn to address each section of the Proposal.

DEFINITIONS

1. UFCW applauds the Proposal deleting references from “threat of injury” that would limit it to physical injuries, but care must respectfully be taken to ensure this decision is fully integrated into each nook and cranny of the Proposal. An example is the definition of “threat of violence” which uses the word “injury.” The definition of “injury” is apparently shackled to Cal. Code Regs., tit. 8, section 14300.7(b)(1) and would, therefore, bizarrely exclude an injury that would require first aid. Nor does that definition expressly embrace threats of violence uniquely important to women such as menacing, stalking, and the psychological injuries – often deeper and more profound than physical ones – that are the intended result of such behavior. These behaviors could, ironically, permit a victim to obtain a TRO yet are not explicitly included as “threats of violence.” They all should be. Finally, that regulation’s definition of “first aid” specifically or “injury or illness” generally do not include psychological injuries that could be far worse than injuries that would meet the definition. Example: a woman who is sexually groped without warning.

The point is that special care must be taken to ensure that the deletion of a requirement of injuries being physical must be carried forward and through every other part of the Proposal.

2. The definitions of “workplace” and “place of employment” should be aligned to ensure they are not antiquated, failing to capture that a grocery delivery drivers’ vehicle and destinations are workplaces and employer-provided lodgings and transportation are related to work.
3. “Incidents” should be defined to ensure it is enforceable and should include close calls to fulfill the point of the Proposal which is to ensure that employers prioritize preventing violence from occurring in the first place.
4. Overall, unless it can be articulated that a definition used in the healthcare violence regulations can only be applied in a healthcare setting, the precedented and tested definitions used there should be used in the Proposal. In this regard, UFCW specifically embraces the Labor Federation’s learned discussion of some of the noteworthy and uniformly unwelcome differences between the Proposal and the healthcare regulations.

VIOLENCE PREVENTION PLANS

1. The healthcare regulations sensibly require an employer to evaluate whether inadequate staffing might be a cause of workplace violence. Respectfully, how can this be omitted from the Proposal? By virtual definition when analyzing occurrences of violence committed by one person against another in a place of work, the vulnerability and likelihood of a worker to violence is obviously linked to whether they are alone or accompanied or whether security personnel are on-site. Just as we would immediately understand a woman walking alone late at night in a troubled area is more vulnerable to assault than one not walking alone so, too, is the “aloneness” of a worker an utterly essential part of meaningfully assessing how to prevent workplace violence. This is recognized in healthcare not because of some healthcare-related reason but because it is common sense. For the same reason, time of day is also an essential aspect of assessing the risk of, and so preventing, workplace violence as is the implementation of workplace and environmental controls and the availability of personal protective equipment.
2. For much the same reason, employee’s knowledge of and access to violence preventing mental health services is an obvious element of possibly preventing worker-on-worker violence. An employers Workplace Violence IIPP must include post-incident services and how to access those services.
3. Respectfully, how in this era and environment the Proposal can delete “active shooter” at minimum please requires explanation as, again respectfully, we cannot think of one and strongly urge its readoption into the Proposal.
4. The Plan addresses the inclusion of workplace violence into the IIPP. Its importance cannot be overstated. Thus, it should be (i) easily discerned by being separate from other work documents and (ii) the first copy must be free to any worker and their representative who asks for it and broadly and accountably advertised as such. The healthcare regulation contains

provisions related to responding to employee inquiries about violence prevention. They should not for some reason be omitted for all other workers.

5. Ambiguity forbids enforcement. Clarity facilitates it. The same is true with compliance. Thus, a requirement of “periodic” review is almost no requirement at all. Literally, the word just means something that occurs at “intervals”.⁵ Those intervals could be once a year, once a decade, once a century. In contrast, the healthcare regulation sensibly requires annual reviews and we request the same for the General Industry.

6. Coordination between employers in preventing violence in settings such as grocery stores where many different employees of different companies are on-site is critical. Thus, UFCW questions why (3)(A) and (B) have been stricken and requests its inclusion into the Proposal.

7. It should be clear that Plans need to be in full force and effect at all times. Again, clarity facilitates both compliance and enforcement.

8. Respectfully, UFCW can conceive of no reason to depart from the healthcare regulation’s common-sense explicit emphasis on engineering and work practices. Without these being explicitly emphasized along with staffing, the temptation is for employers simply and fecklessly to rely solely upon trainings to prevent violence rather than strategies that might cost more but save lives. For this reason, being explicit on this point is essential to promoting such measures if they are needed and it is requested that language from the Healthcare Workplace Violence Standard is adopted into this standard

VIOLENT INCIDENT LOG

1. UFCW respectfully opposes the five-year exemption for allegedly violence-free employers as inconsistent with the whole idea and gravity of preventing violence. In cost-cutting corporate cultures, past is not reliably prologue here. It, for example, fails to account for an employer that made workplace changes that previously promoted safety, but it knows will place employees at-risk.

2. UFCW respectfully opposes a departure from the incident detail required by the healthcare regulations. Again, the detail required there is not required because the need for it is unique to healthcare. It is, instead, needed to ensure the log requirement is actually useful. Why, for example, would the Proposal delete such a baseline requirement as the location of the violent incident and the precise nature of an assault? Respectfully, much of the point of requiring a log is rendered pointless without such requirements.

⁵ <https://www.merriam-webster.com/dictionary/periodic>

TRAINING

1. Once more, respectfully, a requirement of “periodic” training is no requirement at all. Training -- we are talking about preventing violence – should be annual given the life-and-death importance of the education. Likewise, the Proposal should clarify such training is on paid time and when the worker is free of all other tasks as it is an essential part of work.
2. The Proposal must ensure the language and cultural competence of training. Otherwise, it will be no training at all and support the language in this draft to that effect
3. New hires should be trained when newly hired and not wait for a “periodic” period. And, when a plan is instituted, the Proposal must be explicit that the training of all employees in it occur within 30 days.
4. De-escalation strategies are the ounce-of-prevention facet of trainings that could do the most to prevent workplace violence, whether between employees or between employees and the public. They must be explicitly required.
5. “General awareness” is an unenforceable, thoroughly vague standard offering no clarity or guidance to employers or employees. Respectfully, it is a loophole that entirely defeats the point of requiring training.

RECORDKEEPING

1. UFCW respectfully opposes one year as too short a time frame. Five years is a more analogously customary requirement and will allow employers to assess workplace violence hazards and strategies over time to check for the Workplace Violence Plans effectiveness.
2. Workers and their representatives should have access to records and, when needed due to confidentiality, have those documents be deidentified. This is an essential part of how they can judge their own risk and take safety precautions accordingly.
3. Relatedly, post-incident employer response is an essential facet of ensuring employers learn from prior violent events and, in fact, are motivated to learn from the past. Under f (6), access to documents under f (4) must be given to workers and their representatives to promote internal corporate accountability and as well as enforcement.

CONCLUSION

It is true, as detailed above, that UFCW does, with respect, have many concerns about the current text of the Proposal. Our siblings in labor are similarly concerned. But, we would be remiss if we did not close on two notes: one, a note of sincere appreciation to you and the Division for this effort and the timely re-release of the draft given the current state of crisis at workplaces across California and, two, a note of optimism that in collaboration with you and your colleagues the Proposal can be revised to more closely parallel the analogous one already in use and, as a consequence, resolve many of the most serious flaws in the current Proposal.

Sincerely,

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

Amber Baur, Executive Director
UFCW Western States Council