



July 18, 2022

Kevin Graulich
Senior Safety Engineer
Cal/OSHA

By email: KGraulich@dir.ca.gov

Re: Workplace Violence Prevention General Industry Standard 2022

Dear Mr. Graulich:

We appreciate the tremendous amount of work involved in the revisions for the proposed standard on Workplace Violence Prevention in General Industry (hereinafter “WPV”). This standard, when passed, will hopefully protect workers who fall under the jurisdiction of the Division of Industrial Relations. Unfortunately, it will not protect millions of vulnerable California workers who are left out of California’s safety net because they are misclassified (i.e. app-based workers) or they are hired as temporary and contingent workers or day laborers and domestic workers. We hope that the work to create this standard will elevate awareness for this issue and the necessity to protect all workers in California.

From violence against frontline workers in response to mask mandates to the increasing risk of mass shootings in public areas, the need has never been greater for consistent and proactive provisions to protect workers from violence at their place of employment. Since the last draft revisions there have been multiple workplace shootings that resulted in over 1000 fatalities and injuries nationwide.¹ A general industry standard will go a long way towards ensuring that workers will not bear the brunt of public outrage nor feel compelled to stand their ground against threats of violence.

¹ <https://www.bls.gov/news.release/cfoi.t02.htm>

Worksafe appreciates the Division's consideration and inclusion of these comments and our prior comments in this effort. We continue to advocate for the adoption of a broad and strong standard that will protect all workers in all industries from workplace violence.

I. 3343(b) Definitions

The most critical part of the proposed regulation is the definitions which dictate how the rest of the regulations are to be interpreted. Thank you for incorporating some of the suggestions from our last Comment letter, dated December 14, 2018. We would like to reiterate some of our prior comments as well as provide some more recommendations.

“Designated Representative”

Thank you for taking out the definition of “union representative.” We believe the WPV should mirror the [WPV in Healthcare standard](#)² which does not utilize the term “authorized representative,” but rather the term “representative.” Worker-designated representatives play a key role in increasing safety and health in California's workplaces. Their role is especially important when workers are disempowered and not protected by a union. Any reference to a representative needs to be broad enough to permit employees to elect a representative even where there is no collective bargaining agent.

To increase clarity, we propose using the definition of “designated representative” in the [Injury and Illness Prevention Program](#)³ (IIPP) as a template. The following are our suggestions with additional clarifications:

2. The term “designated representative” means any individual or organization to whom an employee gives written authorization to exercise a right of access. ***Where there is a Union representative or a ~~A~~ recognized or certified collective bargaining agent, that individual shall be treated automatically as a designated representative. ~~for the purpose of access to the Program.~~***
3. The term “written authorization” means a request provided to the employer containing the following information:
 - (a) The name and signature of the employee authorizing a designated representative ***who is acting to access the Program*** on the employee's behalf;
 - (b) The date of the request;
 - (c) The name of the designated representative (individual or organization) authorized ***to act receive the Program*** on the employee's behalf; and
 - (d) The date upon which the written authorization will expire (if less than one (1) year).

Since workplaces are diverse and the workforce includes both workers covered under a collective bargaining agreement and those who are not, we recommend the following language for section (c):

(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 designated representatives at all times.

...

(2) Effective procedures to obtain the active involvement of employees and designated representatives in developing and implementing the Plan, including their participation in identifying, evaluating, and correcting workplace violence hazards; designing and

² Cal. Code Regs., tit. 8, § 3342. Violence Prevention in Healthcare.

³ Cal. Code Regs., tit. 8, § 3203(8)(A)(2) & (3).

implementing training; ~~and~~ reporting and investigating workplace violence incidents; and reviewing the effectiveness of the plan pursuant to subsection (c)(12).

Definitions regarding hazard identification and control

The current revision is too general and vague with respect to what hazards employers should be looking for and what control measures Cal/OSHA considered sufficient. It does little to help employers understand hazard identification and control. This standard needs to more closely mirror the [WPV in Healthcare standard](#) which lays out specific examples of workplace violence hazards and effective control measures. Doing so provides a much clearer roadmap for employers to follow when thinking about the "environmental risk factors" that could contribute to violence incidents or threats.

We recommend defining and then providing examples of the types of engineering controls, environmental risk factors, and work practice controls that may be effective. There also needs to be provisions that specify the employers' requirement to evaluate what features of their work environment might contribute to increased workplace violence risks (e.g., dark corners, lack of sight lines between workers, objects that can be used as weapons, lack of functioning alarm systems, easy access to exits, etc.) and to redesign the workplace with those risks in mind. We have adapted the definitions in the [WPV in Healthcare standard](#) for the following recommendations:

"Environmental Controls"

"Engineering controls" means an aspect of the built space or a device that removes a hazard from the workplace or creates a barrier between the worker and the hazard. For purposes of reducing workplace violence hazards, engineering controls include, as applicable, but are not limited to: electronic access controls to employee occupied areas; weapon detectors (installed or handheld); enclosed workstations with shatter-resistant glass; deep service counters; separate rooms or areas for high risk patients; locks on doors; furniture affixed to the floor; opaque glass in customer service areas ~~patient rooms~~ (protects privacy, but allows ~~employees the health-care provider~~ to see where ~~potential risks are the patient is~~ before entering the room); closed-circuit television monitoring and video recording; sight-aids; and personal alarm devices.

"Environmental risk factors"

"Environmental risk factors" means factors in the facility or area in which ~~health-care~~ services or operations are conducted that may contribute to the likelihood or severity of a workplace violence incident. Environmental risk factors include risk factors associated with the specific task being performed, such as working in isolation, inadequate illumination and collection of money or other valuable items."

"Work practice controls" means procedures, rules and staffing which are used to effectively reduce workplace violence hazards. Work practice controls include, as applicable, but are not limited to: appropriate staffing levels; provision of dedicated safety personnel (i.e. security guards); employee training on workplace violence prevention methods; and employee training on procedures to follow in the event of a workplace violence incident.

"Injury"

The Violent Incident Log specified in section (d) requires that "every workplace violence incident" be logged, regardless of whether an injury occurred or not. This makes the inclusion of a definition for

“injury,” which refers to Title 8, Section 14300.7(b)(1),⁴ unnecessary and potentially confusing. Therefore, we believe that the term “injury” in the definitions should be eliminated.

“Qualified trainer”

In support of our comments to the training section below, we believe that there needs to be a definition for who constitutes a “qualified trainer.” The language we propose is both consistent with the Fair Employment and Housing Act (FEHA), Title 2, § 11024 of the California Code of Regulations, and promotes a trauma-informed training and prevention model:

(2) A Qualified trainer means a human resource professional or harassment prevention consultant, including a peer advocate, engaged as an employee or independent contractor, who is aware of “trauma-informed approaches,” as defined by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA) to violence prevention education and training and has a minimum of two years of practical experience in one or more of the following:

- a. designing or conducting discrimination, retaliation and workplace violence and/or sexual violence prevention training;
- b. responding to workplace violence complaints or other discrimination complaints;
- c. conducting investigations of workplace violence and/or sexual violence complaints;
- d. advising employers or employees regarding discrimination, retaliation and workplace violence and/or sexual violence prevention.

“Threat of Violence” and “Workplace Violence”

We appreciate the deletion of the word “physically” to the definition for the “Threat of violence.” This helps to broaden the definition to cover workplace violence that occurs along the spectrum of violence from actions and language that make a person uncomfortable to threats and harassment to conduct that results in bodily injury. This is all critical to ensure that predictors of violent behavior are flagged.

NIOSH describes workplace violence as occurring along a “spectrum...[that] ranges from offensive language to homicide⁵.” This includes stalking behavior as well as verbal statements. Stalking has been identified as *the most prevalent form of abuse at work*. An estimated 15.2% of women have experienced stalking behavior that made them fearful or made them believe that they or someone close to them would be harmed or killed during their lifetimes. Thus, we strongly recommend including “stalking” to the definition for “workplace violence” and conduct that can result in stress and psychological injury to the definition for “threat of violence.”

In addition, the definition of “workplace violence” is not broad enough to cover all the working conditions that low-wage workers find themselves in. This includes worksites at a fixed location, at non-traditional worksites, in work-related travel such as employer-provided or arranged transportation and lodging, or who are subject to stalking incidents in work-related situations that might not be considered a “worksite.”

Therefore, we recommend the following language:

⁴ Cal. Code Regs., tit. 8, § 14300.7, subd. (b)(1)(A)-(F) requires employers to report injuries resulting in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or significant injury or illness diagnosed by a physician or other licensed healthcare professional or loss of consciousness.

⁵ <https://www.cdc.gov/niosh/docs/96-100/introduction.html>

(1) “Threat of violence” means a statement or conduct that has a reasonable possibility of resulting in injury, psychological trauma, or stress, regardless of whether the employee sustains an injury; 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) “Workplace violence” means any act of violence or threat of violence that occurs at the place of employment, worksite, or while using employer supplied or arranged transportation or any threat of violence by a supervisor that occurs at employer supplied lodging. ~~The term workplace violence shall not include lawful acts of self-defense or defense of others.~~ Workplace violence includes the following:

...

(C) Stalking of an employee that results in, or has a likelihood of resulting in material harm to the physical safety and health of such employee when such stalking has arisen through and in the course of employment or occurs at the worksite.

“Self-inflicted harm”

Section 3343(b) contains the following exception to the term “workplace violence:”

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.

This language is not currently included in the Workplace Violence in Healthcare standard. We oppose the inclusion of this exception and request that any exception mirror the Healthcare standard. Suicide and acts of self-inflicted harm are a violent events. Those observing or otherwise being exposed to suicide or attempted suicide by a co-worker, patient or client, or other individual in the workplace may cause psychological trauma or stress as well as physical injury.

“Multi & Dual Employer” worksites

Since multi and dual employer worksites are the norm, not the exception, we recommend definitions for them to support provisions in subsection (c) about protecting workers in multi/dual employer settings. The language we recommend below is taken from the prior revision language which was deleted in this current revision:

(A) A “multi-employer” worksite is a worksite where there is more than one employer and each employer is in a direct contracting relationship to perform work with its employees.

(B) A “dual-employer” worksite is a worksite where one or more employees are employed by both employers at the same time to perform work at the worksite.

We urge this language to be restored.

II. 3343(c) “Workplace Violence Prevention Plan”

Plan Needs to be in Effect “At All Times”

The WPV should mirror the [WVP in Healthcare standard](#) and be in effect at all times. Workplace violence can happen at any time, and having a plan in place at all times provides maximum protection to workers. We recommend:

*(c) **Workplace Violence Prevention Plan.** The employer shall establish, implement, and maintain an effective workplace violence prevention plan (Plan) at all times in every unit, service, and operation.*

Stand-alone Plan

Although the revisions allow for the WPV Prevention Plan (“Plan”) to be included in the IIPP, its inclusion should be a stand-alone section so that employees can easily identify and understand the protections in the Plan. It should not be included in such a manner that its relevance and importance is swallowed up in the broader IIPP. We suggest the following language:

(c) ...The written Plan may be incorporated into the written Injury and Illness Prevention Program (IIPP) required by ~~title 8~~, section 3203 as its own stand-alone section or maintained as a separate document, and shall include all of the following elements:

Automatic Provision of the Plan

The revisions mandate employers to provide employees with a copy of their Plan upon request “at all times.” This is a strong protection that mirrors the [WPV in Healthcare standard](#). However, the language as stated implies that the plan is made available when an employee requests it, rather than being easily and readily available such as through a website or at a central location where it is easy to obtain. Workers have reported difficulty with obtaining IIPPs and similar plans because they often have to request it and then figure out how to access it because the employer makes the provision of it cumbersome. For example, employers may make such plans only available online or electronically while also frustrating the workers’ ability to print out the plan by charging employers for the print out or having electronic plans that cannot print out, etc.

The workers’ right to obtain a copy of the plan should go further and require employers to automatically provide all employees and new employees with a copy of their employer’s Plan as well as updates to the Plan when it is revised:

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 in a manner that is easily accessible such as a printed copy or an electronic copy that can be printed out at no charge to the employee. The employer shall provide a copy of the plan to all employees and all new employees at no charge to the employee. The employer shall provide a copy of all revisions to all employees and new employees at no charge to the employee.

Control Measures & Active Shooter Provisions

Deletion of Active Shooter Language

The more specific a plan is in assessing hazards, the more effective corrective measures can be. There are certain hazards that are common to all workplaces such as the threat of an active shooter event. The explicit exclusion of the active shooter language is more than concerning given the rise of gun violence in America. Workplaces are not excluded from this threat.⁶ Employers must be obligated to implement specific engineering controls and protocols to prevent and respond to such incidents. We advocate returning to the original language:

(7) Procedures to respond to workplace violence emergencies, including active shooter threats:

Environmental Risk Factors

An employer should be required to identify, evaluate, and implement necessary control measures to eliminate or reduce environmental risks. Failure to include this critical element provides employers with a vague rule with little guidance on how to prevent workplace violence. We recommend including specific definitions which we have outlined above, and including the following language:

(c)(9) Procedures to identify and evaluate workplace violence hazards and environmental risk factors, 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.

Engineering and Workplace Practice Controls

Thank you for including a provision in (c)(10) regarding procedures to correct workplace violence hazards. We believe that even more specificity with respect to engineering and workplace practice controls is necessary. An effective Plan must identify the engineering and workplace practice controls the employer will implement to prevent or reduce the risk of workplace violence. This is important because once the employer has done an effective hazard assessment the next logical step is to develop controls to either eliminate or reduce the risk of the hazard.

We also recommend including a specific timeline by which employers must take corrective action after identifying the hazard so that employees are clear on the expectations for addressing the hazard. We recommend the following language for (c)(10) that mirrors the [WPV in Healthcare standard](#):

(c)(10) Procedures to correct workplace violence hazards in a timely manner in accordance with title 8, section 3203 (a)(6). Engineering and work practice controls shall be used to eliminate or minimize employee exposure to the identified hazards to the extent feasible. The employer shall take measures to protect employees from imminent hazards immediately, and shall take measures to protect employees from identified serious hazards within seven days of the discovery of the hazard, where there is a realistic possibility that death or serious physical harm could result from the hazard. When an identified corrective measure cannot be implemented within this timeframe,

⁶<https://www.usatoday.com/story/news/nation/2020/02/27/milwaukee-shooting-molson-coors-workplace-mass-shootings-rare/4890864002/>

the employer shall take interim measures to abate the imminent or serious nature of the hazard while completing the permanent control measures.

Include Language to Permit Cellular Devices on the Floor

In light of the recent workplace violence attacks and the rise of gun violence, it is imperative that employees be permitted to carry lifesaving technology on their person during the work day. Cell phones provide an immediate connection to first responders in the event of workplace violence. Many employers have policies that forbid cellular devices during employees work shifts. We recommend that the revisions mandate that employers allow employees to keep cell phones on their persons while on the clock, or alternatively make available panic buttons, personal alarms, or easily accessible emergency resources (such as a landline or an emergency line) at the worksite.

(c)(3) Multi-Employer Settings

This revision's inexplicable deletion of hard-fought multi-employer language is concerning. Multi- and dual-employer settings are extremely common and the failure to include this provision will cause confusion and incentivize attempts to avoid accountability.

Employers have a non-delegable duty to provide a healthy and safe work environment.⁷ Employers need prescriptive and clear guidance on how to handle workplace violence in multi/dual employer settings. This is necessary to ensure employer compliance and also ensure that workers understand who is responsible for implementing the Plan in the workplace. At-risk workers often find themselves being passed back and forth between employers in a multi/dual employer setting when there are workplace situations.

The current language appears to be an attempt to reduce duplicative sections, however, the ultimate effect is granting employers the discretion to decide when a situation is "applicable." We advocate for the following language in addition to the definitions provided in the definition section above:

(3) Methods the employer will use to coordinate implementation of the Plan with other multi and dual employers at the worksite ~~when applicable, as set forth in subsections (e)(3)(A) and (e)(3)(B). These methods shall ensure that all employees are provided the training required by subsection (e).~~ to ensure that all employees at multi-employer and dual-employer worksites are protected by all of the provisions of this section. These methods shall ensure that all employees are provided the training required by subsection (e) and shall ensure that workplace violence incidents involving any employee are reported, investigated, and recorded.

(c)(4) Type 3 Violence

We continue to be concerned about the lack of protocols for employees to report Type 3 violence which involve supervisor-perpetrated workplace violence in section (c)(4). Many workers, mostly immigrant women of color, suffer violence at the hands of supervisors or others who held themselves out to be supervisors, as has been documented in recent documentaries, including PBS-Frontline special *Rape on*

⁷ Lab. Code § 6400; *Labor Ready, Inc.*, Cal/OSHA App. 99-3350, DAR (May 11, 2001); *Kelly Services*, Cal/OSHA App. 06-1024, DAR (June 15, 2011); *See also* AB 1897 providing that the client employer (secondary employer) cannot shift responsibility or liability to the staffing agency, Lab. Code § 2810.3(b)(2) & (C); *Staffchex*, Cal/OSHA App. 10-2456-2458, DAR (August 28, 2014) ("Staffchex").

the Night Shift, and *Rape in the Fields*.⁸ In agriculture and janitorial work many incidents of violence are perpetrated by supervisory employees.

Thus, it is extremely important to set up procedures for workers to report to someone other than their direct supervisor. Workers are understandably very uncomfortable about reporting threats and incidents of sexual violence. To reduce barriers to reporting we propose this language that tracks the shade provision language in the outdoor heat regulation, under the [California Code of Regulations, Title 8 Section 3395](#)⁹:

(c)(4) Effective procedures for the employer to accept and respond to reports of workplace violence, in a manner that does not discourage reporting, including procedures for reporting all types of violence to a designated person, and procedures for reporting Type 3 violence to a designated person who is not a direct supervisor” and to prohibit retaliation against an employee who makes such a report.

(c)(6) & (7) Specifics for Reporting Workplace Violence

The inclusion of anti-retaliation language is basic and essential, but we believe workers also need to be informed of their right to report workplace violence to law enforcement and the right to do so without fear of retaliation. Workers need to know that they can make a police report about a violent incident. It is important to ensure that workers are affirmatively informed of this right, given the fear of retaliation that many workers have with reporting incidents to law enforcement and governmental agencies. We join our allies in advocating for mandates to the employer to provide a written form for recording workplace violence incidents created by Cal/OSHA that states an employee’s right to make a police report about the incident and provides employees with contact information for law enforcement agencies.

The regulation should specify that the employer provides this form at the time of hire and/or during workplace violence prevention training and to any employee who is a victim of workplace violence. The form should be provided in a language the worker understands or with translation service, including phone translation service if needed to help fill in the report. A worker who files a report should be provided a copy of the completed report.

We have suggested language for subsection (6) to improve clarity to workers:

(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. The employer shall provide a written form created by Cal-OSHA. The form shall provide information on an employee’s right to make a report to the employer, law enforcement, or a government agency without fear of reprisal. The form shall provide employees with contact information for law enforcement agencies and government agencies. The form needs to be provided in a language the worker understands or with translation service, including phone translation service if needed, to help the employee fill out the form. The form should be provided at the time of hire, during workplace violence prevention training, and to any employee who is a victim of workplace violence. A worker who files a report should be provided a copy of the completed report.

...

⁸ Bergman et. al., *Rape in the Fields*, Frontline, Investigative Reporting Program at UC Berkeley, and the Center for Investigative Reporting (May 15, 2012) < <http://www.pbs.org/wgbh/frontline/film/rape-in-the-fields/>> (as of Dec. 5, 2018).

⁹ Cal. Code Regs., tit. 8, § 3395.

(C) How an employee can report a violent incident or threat to local law enforcement without fear of reprisal.

Section (7)(A) is an improvement on ensuring that the employer knows their responsibility to alert workers to threats, however, it is still too general. Workers also need to be informed of the presence, location, and nature of a security threat. Failure to be thorough and to ensure an effective process may result in workers being in potentially dangerous and vulnerable situations.

The language of (c)(7)(C) is confusing. We do not understand what is meant by the suggested language of “Applicable procedures to obtain help from staff...or the appropriate law enforcement agency.” Moreover, the inclusion of “if any” in terms of “staff” and “security personnel” is concerning since both the IIPP and the current revision, subsection (c) outlines requirements for the responsible staff person implementing the plan. The Plan would be useless if affected employees did not have clear instructions on how to obtain help in the case of workplace violence.

Finally, employers should be required to provide resources to employees to address workplace violence. This can be a list of resources that the employer can compile from local agencies. People who are in a state of shock or stress or who have suffered an injury due to workplace violence may be in such a distressed state that they are unable to conduct research to obtain the information that they need.

Suggested language for subsection (7) regarding employer procedures on responding to workplace violence are:

(7) A) How employees will be alerted about workplace violence emergencies through an effective means by which employees can be alerted to the presence, location, and nature of a security threat;

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

(C) ~~How Applicable 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;

(D) How an employee can report a violent incident or threat to local law enforcement or emergency services without fear of retaliation;

(E) Provision of a list of relevant resources to employees with medical, mental health, public benefits, shelter, law enforcement, and other relevant resources to address the workplace violence.

Additionally, we recommend the following insertion in the language regarding post-incident incident response and investigation:

(c)(11) Procedures for post incident response and investigation, including completion of a form created by the Division that explains an employee's right to make a report to law enforcement about the incident and provides contact information for local law enforcement. A form must be provided to any employee who is a victim of workplace violence, at the time of training, and at the time of hire. The form must be provided in a language the employee understands or with translation service, including phone translation service if needed to help complete the form. Any worker who files a complaint or suffers an injury should be provided with a copy of the completed incident investigation.

(c)(12) Periodic Review

As written, the language for periodic review of the Plan does not provide sufficient incentive for reassessment. Without specificity, plans can fall into a state of ineffectiveness. We recommend a clear annual timeline for review of the plan so the employers can review how effective their plan was given the incidents and issues that may have come up in the prior year.

Furthermore, although employees and their representatives are involved in the development and implementation process of the Plan pursuant to (c)(2), they are not involved in the annual review process. The continued engagement of employees and their representatives is critical to ensuring that the plan reflects workplace violence incidents and what is needed to address and correct them. To this end, employee representatives often share stories where the employer has failed to notify them of changes to workplace safety plans. We are incorporating a notice requirement to address this issue.

Our recommended additions are:

(c)(2) Effective procedures to obtain the active involvement of employees and designated representatives in developing and implementing the Plan, including their participation in identifying, evaluating, and correcting workplace violence hazards; designing and implementing training; ~~and~~ reporting and investigating workplace violence incidents; and reviewing the effectiveness of the plan pursuant to subsection (c)(12).

...

(c)(12) Procedures to review the effectiveness of the Plan ~~periodically~~ annually and after ~~any~~ workplace violence incident ~~that results in an injury~~, and to revise the Plan as needed with provisions for providing notice to and active involvement of employees and their designated representatives pursuant to subsection (c)(2).

III. 3343(d) Violent Incident Log

Post Incident Response & Subsequent Investigation

The revisions do not adequately recognize the importance of documenting the post-incident response and subsequent investigation. Employers need to be incentivized to be proactive with their post incident follow-up. Documentation ensures accountability and provides a tool for Plan improvement and reduction of workplace violence. Recordkeeping post-incident responses and investigation often prompts employers to engage in a post-incident response on a hazard, and helps employees, their representatives and DOSH determine whether the employer has been proactive in addressing hazards.

In addition to logging the post-incident response, employers should also be required to maintain a delineated post response procedure that senior management is expected to follow, such as:

- Conducting a post-incident debrief as soon as possible after the incident with all ees, supervisors, and security involved in the incident;
- Providing or securing immediate medical care or first aid to injured employees;
- Identifying all employees involved in the incident and identifying but maintaining anonymity in the case of sexual violence incidents; and
- Making individual trauma counseling available to all employees affected by the incident.

Our proposed solution is for the Division to restore the original language:

The employer shall record information in a violent incident log (Log) about every workplace violence incident and post-incident response and investigation performed in accordance with subsection (c)(11).

Specificity

We do not understand why this section has been stripped of specificity. Where the [WPV in Healthcare standard](#) was specific in all items to be logged, the revisions to this draft leave it vague and weak in comparison. Experience has shown that employers require as much specificity as possible, otherwise, they will interpret the requirements loosely. For example, taking out “specific” in (d)(1) may result in extremely general facts such as “the building” instead of “the bathroom in the customer service area at the front of the store.”

Of particular importance is the ability to include “near misses” in the log. That is incidents that would have constituted workplace violence had something not Plan-related happened to stop the incident. For example, an employee was about to commit an act of workplace violence but something happened to prevent the completion of the action (i.e. an elevator door closes, another individual walks in, a fire alarm goes off.)

We believe all deleted portions of this entire section need to be brought back and the section improved. The Division should continue to use the [WPV in Healthcare standard](#) as a template and add provisions regarding the classifications of who committed the violence, the circumstances of the incident and where it occurred. This information is critical for understanding the workplace violence that occurred as well as to prevent future such instances. We recommend the following:

- (d) **Violent Incident Log**...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) A detailed 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) A classification of who committed the violence, including whether the perpetrator was a patient/client/customer, family/friend of a patient/client/customer, stranger with criminal intent, coworker, supervisor/manager, partner/spouse, parent/relative, or other perpetrator;*
 - (5) A classification of circumstances at the time of the incident, including whether the employee was completing usual job duties, working in poorly lit areas, rushed, working during a low staffing level, in a high crime area, isolated or alone, unable to get help or assistance, working in a community setting, working in an unfamiliar or new location, or other circumstances;*

(6) A classification of where the incident occurred, including whether it was in a patient or client room, emergency room or urgent care, hallway, waiting room, restroom or bathroom, parking lot or other area outside the building, personal residence, break room, cafeteria, or other area;

(7) 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;

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

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

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

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

(8) Information about the person completing the Log including their name, job title, phone number, email address, and the date completed.

5-Year Exception

We are disappointed at the inclusion of a new “Exception” to the Violent Incident Log to exclude employers who have had no workplace violence incidents in the past five years from the requirement to maintain or keep a Log. The regular maintenance and prioritization of a Violent Incident Log is critical to ensuring that employers are vigilant about workplace violence. There should be a process and a routine in place to regularly survey the workplace for workplace violence and this exception incentivizes minimization of the log and incidents so that no logging occurs. Moreover, workers have regularly reported safety disincentivizing programs that place pressures either directly or indirectly upon employees to not report cases of workplace safety and health violations. This exception will foster a similar environment and is extremely detrimental to the intent to protect workers from workplace violence.

IV. 3343(e) “Training”

Revisions in this section significantly weaken it in comparison to the [WPV in Healthcare standard](#). Firstly, requiring specific training for risks that employees would encounter is a given. We advocate to restore the phrase “*that addresses the workplace violence risks that employees are reasonably anticipated to encounter in their jobs.*”

The section, as written, provides for only a general workplace violence training. Additional training only occurs if an employer has experienced an incident in the last five years. It appears that the revision is attempting to create a two-tiered system where the initial training is general and the secondary training is more specific to the workplace violence hazards in the workplace. This follows the assumption that a workplace may not be experiencing or may not understand what workplace violence is. However, the items listed for additional training should be provided regardless of whether or not there has been an incident or not. Thus, although we understand the premise, we, nevertheless, are advocating for a comprehensive and thorough training regardless of whether or not there has been an incident.

Training should be required to be interactive with opportunities for role-playing and meaningful discussions about Workplace violence. The [ATD Standard](#),¹⁰ for example, has the following language:

¹⁰ Cal. Code Regs., tit. 8, §5199(c)(7)(J) and (i)(5).

(5) Every training program shall include an opportunity for interactive questions and answers with a person who is knowledgeable in the subject matter of the training as it relates to the workplace that the training addresses and who is also knowledgeable in the employer's ATD exposure control or biosafety plan. Training not given in person shall fulfill all the subject matter requirements of subsections (i)(4) and shall provide for interactive questions to be answered within 24 hours by a knowledgeable person as described above.

The section that requires that all employers provide training when the plan is first established should be returned to the revision. This is a critical provision to ensure that all employees receive knowledge and training immediately upon entering the workplace.

Trainings should be conducted by a qualified trainer. Workers have shared with us that they received trainings from supervisors who were perpetrators of violence. This poses an obstacle for workers to receive effective and unbiased training. Setting standards for trainers ensures the person conducting the training is knowledgeable in the subject matter. We have added the term “qualified trainer” to the definitions above. We have also specified that a qualified trainer should be conducting the training in our recommended language below.

Lastly, as mentioned in prior comments, it is important for workers to understand what resources are available to them if a workplace violent incident occurs. This is important to include in the curriculum as many workers might not be aware of other rights they have under other areas of the law or resources available to them in the case of a workplace violence incident.

Our recommendations are:

*(e) **Training.** The employer shall provide effective training to employees by a qualified trainer as specified in subsections (e)(1) through (e)(5) below and (e)(2) that addresses the workplace violence risks that employees are reasonably anticipated to encounter in their jobs. Training 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.

(2) The employer shall provide employees with ~~general awareness~~ training on workplace violence that includes:

- (a) the workplace violence hazards specific to the employees' jobs;*
- (b) how to seek assistance to prevent or respond to violence;*
- (c) ~~the employer's Plan,~~ how to obtain a copy of the employer's Plan,;*
- (d) an explanation of the employer's workplace violence prevention plan, including the employer's hazard identification and evaluation procedures, general and personal safety measures the employer has implemented;*
- (e) how the employer will address workplace violence incidents.*
- (f) how the employee can participate in the development, implementation, reviewing and revising the employer's Plan;*
- (g) the definitions and requirements in this section;*
- (h) how to recognize the potential for violence, factors contributing to the escalation of violence and how to counteract them, and when and how to seek assistance to prevent or respond to violence;*
- (i) strategies to avoid physical harm;*

- (j) how to recognize alerts, alarms, or other warnings about emergency conditions such as mass casualty threats and how to use identified escape routes or locations for sheltering, as applicable;
- (k) the role of private security personnel, if any;
- (l) how to report workplace violence incidents or concerns to the employer, **governmental agencies such as the DFEH, and law enforcement** without fear of reprisal utilizing a written form pursuant to (c)(11).
- (m) 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)~~ and (f)(4); and
- (n) any resources available to employees for coping with incidents of violence, including, but not limited to, critical incident stress debriefing or employee assistance programs.

(3) 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, ~~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).~~

(4) Additional training shall be provided when a new or previously unrecognized workplace violence hazard has been identified. The additional training may be limited to addressing the new workplace violence hazard.

(5) Every training program shall include an opportunity for interactive questions and answers with a person who is knowledgeable in the subject matter of the training as it relates to the workplace that the training addresses and who is also knowledgeable in the employer's Workplace Violence hazards and Prevention Plan. Training not given in person shall provide for interactive questions to be answered within 24 hours by a knowledgeable person as described above.

V. 3343(f) "Recordkeeping Requirements"

One year vs. five year minimum record maintenance

We are unclear about the logic behind the requirements in (f)(1) and (2) for one year record maintenance, versus the five year minimum requirement that is seen in (f)(3) to (4). Records identified in subsection (1) for workplace violence hazard identification, evaluation, and correction are critical to understanding or investigating workplace violence that may have continued or worsened. Training records are also important to determine whether or not the training provided as preventative and sufficient to prevent workplace violence. Maintenance of only one year of records falls woefully short of being able to track and understand the effectiveness of the trainings provided. It may also be unhelpful if incidents occurred just outside of the one year minimum therefore not allowing workers, their representatives, or Cal/OSHA to understand whether or not the training was helpful to prevent incidents of workplace violence. We believe all records should be maintained at a minimum of five years.

(f)(6) Free Record to Employee & 15 Calendar days

Thank you for clarifying what records are available to workers and their representatives; however, we do not understand why they are restricted from records under (f)(4). Records of investigations are also critical to workers and their representatives.

In addition, we believe that the 15 calendar days offered to employers is excessive. Employers should be maintaining an active record that should be readily and easily printed out or provided electronically immediately upon request. The extensive time allows for the potential for record manipulation. We recommend shortening the time to one business day:

(f)(6) All records required by this subsection shall be made available to employees and their representatives, on request for examination on request, for examination and copying within ~~15~~ one calendar days of a request. A single copy of any record must be provided free of charge. If the employee or their representative agrees to receive the record electronically, the employer may provide the record electronically.

VI. Reporting

Unlike the [WPV in Healthcare standard](#), the revisions in this draft have no guidelines for reporting incidents to Cal/OSHA. Given the potential severity of these incidents and their ability to have catastrophic effects, reporting incidents to Cal/OSHA is critical to ensuring that workers are protected. We recommend the following adaptation from [WPV in Healthcare standard](#):

(g) Reporting Requirements for ~~General Acute Care Hospitals, Acute Psychiatric Hospitals, and Special Hospitals.~~

(1) Every ~~employer general acute care hospital, acute psychiatric hospital, and special hospital~~ shall report to the Division any incident involving either of the following:

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

NOTE: "Injury" as used in subsection (g)(1)(A), means an injury meeting the criteria in Section 14300.7(b)(1).

(B) An incident involving the use of a firearm or other dangerous weapon, regardless of whether the employee sustains an injury.

NOTE: to (g)(1): These reports do not relieve the employer of the requirements of Section 342 to immediately report a serious injury, illness, or death to the nearest Division district office.

(2) The report to the Division required by subsection (g)(1) shall be made within 24 hours, after the employer knows or with diligent inquiry would have known of the incident, if the incident results in injury, involves the use of a firearm or other dangerous weapon, or presents an urgent or emergent threat to the welfare, health, or safety of other employees. ~~hospital personnel~~. For purposes of this reporting process:

(A) "Injury" means a fatality or an injury that requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement.

(B) An "urgent or emergent threat to the welfare, health, or safety of other employees ~~hospital personnel~~" means that hospital personnel are exposed to a realistic possibility of death or serious physical harm.

(3) All other reports to the Division required by subsection (g)(1) shall be made within 72 hours.

(4) Reports shall include, at a minimum, the following items:

- (A) ~~Employer~~ ~~Hospital~~ name, site address, ~~employer~~ ~~hospital~~ representative, phone number, and email address, and the name, representative name, and contact information for any other employer of employees affected by the incident;
- (B) Date, time, and specific location of the incident;
- (C) A brief description of the incident, including but not limited to, the type of attacker, the type of physical assault, the type of weapon or object used by the attacker, if any, working conditions at the time of attack, and whether the assaulted employee was alone or isolated immediately prior to the incident;
- (D) The number of employees injured and the types of injuries sustained;
- (E) Whether security or law enforcement was contacted, and how security or law enforcement assisted the employee(s);
- (F) Whether there is a continuing threat, and if so, what measures are being taken to protect employees by engineering control modifications, work practice modifications, or other measures;
- (G) A unique incident identifier;
- (H) Whether the incident was reported to the nearest Division district office as required in Section 342.
- (I) The report shall not include any employee, client, customer, or patient names. Employee names shall be furnished upon request to the Division.
- (5) The employer shall provide supplemental information to the Division regarding the incident within 24 hours of any request.
- (6) Reports shall be provided through a specific online mechanism established by the Division for this purpose.

**

We look forward to discussing these recommendations with you. Thank you.

Best,

/s/Jora Trang

Jora Trang
Chief of Staff & Equity, Worksafe

/s/AnaStacia Nicol Wright

AnaStacia Nicol Wright
Staff Attorney, Worksafe

Signatories,

Organizations

California Conference of Machinists
California Labor Federation
California Conference Board of the Amalgamated Transit Union
CA Healthy Nail Collaborative
California Teamsters Public Affairs Council
Communications Workers of America District 9
Engineers & Scientists of California, IFPTE Local 20
International Longshore and Warehouse Union
Jakara Movement
La Raza Centro Legal
Legal Aid at Work
National Employment Law Project
ROC the Bay

San Mateo Labor Council
Santa Clara County Wage Theft Coalition
SMART-Transportation Division California State Legislative Board
Southern California Coalition for Occupational Safety and Health (SoCalCOSH)
Strategic Consulting
Street Level Health Project
UNITE HERE
United Food and Commercial Workers (UFCW) Western States Council
Utility Workers Union of America
Warehouse Worker Resource Center

Individuals

Ellen Widess