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July 11, 2025

Re: Workplace Violence Prevention Standard - General Industry

Dear Eric Berg:

We appreciate the opportunity to comment on the proposed workplace violence prevention standard and commend the Division's comprehensive approach to this critical worker safety issue. The collaborative effort among stakeholders and government agencies has produced a thoughtful framework that addresses the urgent need for systematic workplace violence prevention across all industries. We support the Division's commitment to establishing a robust standard with broad applicability that will meaningfully protect workers from the serious and growing threat of workplace violence.

While we appreciate the Division's comprehensive approach, we were disappointed with several elements that unnecessarily limit the standard's protective scope and effectiveness.

First, while we do appreciate the Division now proposes that the exception will not apply to Security Services, Janitorial Services and Domestic Work pursuant to Labor code 1451, we still are concerned about EXCEPTION 6 and would like to propose its elimination. We understand that EXCEPTION 6 limits the applicability of the standard to workplaces with fewer than 10 employees that are not accessible to the public. However, excluding the remainder of small, non-public workplaces is very problematic. These workers face the risk of violence from employers or other employees or unauthorized public access and deserve the same protections as employees in larger or public-facing settings. Whether a workplace is publicly accessible does not diminish the risk of workplace violence. Comprehensive workplace violence prevention must protect all employees, regardless of the workplace's size or level of public accessibility.

Moreover, Cal/OSHA should seize the opportunity to exceed statutory minimums with the standard. EXCEPTION 6 unnecessarily restricts the standards' reach. By encompassing all locations where employees perform work duties, Cal/OSHA can effectively protect all workers from workplace violence.

We believe that key changes in the following sections will further strengthen the standard: (1) definitions for "authorized employee representative," and "workplace violence" (2) subsection (c)(11)(C) regarding trauma counseling.

I. Definitions.

The proposed definitions contain several problematic limitations that will undermine the standard's effectiveness and create unnecessary confusion with existing regulations.

A. "Authorized Employee Representative."

The definition of "authorized employee representative" creates significant coverage gaps. This definition is overly narrow and provides minimal representation. For example, the definition

is limiting recognition to organizations with collective bargaining relationships or those "acknowledged by a public agency." This narrow approach produces troubling loopholes. If an employer refuses to bargain with employee representatives, does representation cease to exist? The definition provides no answer, potentially allowing employers to eliminate employee participation simply by declining to engage.

Moreover, this restrictive approach lacks consistency with other workplace safety standards that recognize broader forms of employee representation. To illustrate, the Injury and Illness Prevention Program regulation defines "designated representative" as "any individual or organization to whom an employee gives written authorization to exercise a right of access. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative for the purpose of access to the Program." Similarly, the healthcare violence prevention standard consistently references "employees and their representatives" throughout the regulation. Though it lacks a definition, the healthcare violence standard implies a broader interpretation that includes a personal representative chosen by the employee.

This deviation from related standards appears arbitrary and undermines employee protections precisely where they are most needed. Narrowing the definition of "authorized employee representative" in this context creates a regulatory gap, leaving workers vulnerable, particularly those in non-unionized workplaces or government agencies without collective bargaining rights. This inconsistency not only weakens worker safety protections but also fragments Cal/OSHA's regulatory framework, creating confusion for employers and enforcement officials who must navigate different representation standards across related workplace safety requirements.

While it is true that "authorized employee representative" appears in other areas of Title 8, its use is limited to specific contexts or procedures. These include exposure to lead, coke oven emissions, formaldehyde, and food flavoring chemicals. The term also appears in regulatory variance procedures, which allow employers to seek exemptions from specific safety orders by demonstrating alternative protective measures that provide equivalent employee protection. In both contexts, the narrow definition serves specific purposes: ensuring that only formally recognized representatives have access to specialized technical data or participate in complex regulatory proceedings that require specialized knowledge. In contrast, workplace violence prevention involves fundamentally different considerations than chemical hazard monitoring or variance applications. Violence prevention requires broad employee participation, situational awareness, and the ability to report concerns without fear of retaliation. These objectives are undermined by artificially limiting who can represent workers.

Therefore, to ensure regulatory consistency and maximize worker participation, we recommend that Cal/OSHA adopt the broader definition from the Injury and Illness Prevention Program, which recognizes any individual or organization with written employee authorization as a designated representative while automatically treating collective bargaining agents as authorized representatives. This approach would eliminate coverage gaps, establish uniform standards cross workplace safety regulations, and ensure that all workers have meaningful representation in the development and implementation of workplace violence prevention measures.

B. "Definition of Workplace Violence."

We appreciate that the Division has expanded the definition of violence to include "psychological trauma, or stress, regardless of whether the employee sustains an injury." There are predictors and early indicators that contribute to violent behavior, and this will ensure that crucial factors are not overlooked. This can ensure better identification and address underlying issues before they manifest as actual violent acts.

However, we are concerned that the phrase "serves no legitimate purpose" lacks a definition, creating ambiguity about what constitutes a threat versus a legitimate workplace communication. Therefore, we recommend removing this or adding a note or reference as to what this means. We appreciate the Division for adding stalking to the definition of workplace violence. However, there are still some key gaps in the definition of workplace violence.

We support the use of "place of employment" instead of "worksite", but think the definition of "workplace violence" should also include violence occurring on employer arranged or provided transportation and should be expanded to include any act of violence or threat of violence from supervisors or managers at employer provided housing. Farmworkers have reported threats and incidents of violence experienced both on employer arranged transportation and in employer provided housing.

In addition, while "place of employment" is broader than "worksite," it needs to be made clear that it includes non-fixed worksites. "Location of employment" would be clearer than "place of employment". See our comments, dated April 28, 2018 for certain types of workplace situations that the current definition may exclude.

We recommend making the following changes to the definition:

"Workplace violence" means any act of violence or threat of violence that occurs at the <u>location</u> ~~place~~ of employment **<u>or while using employer supplied or arranged transportation or any threat of violence by a supervisor or employer that occurs at employer supplied housing</u>**. Workplace violence includes, but is not limited to, the following: . . ."

As shared in our letter on September 3, 2024, 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. However, the proposed definition in this rulemaking proposal is to incorporate Penal Code Section 646.9, which is as follows:

> "(a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for their safety, or the safety of their immediate family, is guilty of the crime of stalking."

However, we recommend against the language "[t]his includes the crime of stalking as defined in California Penal Code 646.9. . ." for the following reasons. Incorporating the penal code definition would be a challenge for employers because this definition is used to impose criminal liability. Employers are not equipped to assess whether actions taken against an employee were malicious, assess the intent behind the behavior, decide whether a credible threat was made, and whether the person is guilty of the crime of stalking.

Furthermore, under Penal Code 646.9, a key component is a "credible threat" made with intent to cause reasonable fear. But in a health and safety context, this creates ambiguity. How would HR or a supervisor assess from an employee's perspective what is a credible threat and what reasonable fear is? Relying on Penal Code 646.9 could lead employers to underreact, since the standard is too high (as it is for the purposes of convicting someone of a crime), and employers and employees may be unsure what conduct "counts" as stalking. Furthermore, it would be dangerous to have supervisors and HRs making determinations that in criminal law require evidence, witnesses, testimony, and legal arguments.

The aim of workplace health and safety laws is to prevent harm and promote a safe work environment. A definition that aligns with this would be best.

Therefore, we recommend the following language as stalking should remain in the definition of workplace violence:

A. The 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. This includes 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 the crime of stalking as defined in California Penal Code 646.9 t or that occurs at a place of employment, or in connection with a place of employment that are brought to the attention of the employer or that the employer could otherwise be reasonably be aware of.

Therefore, the definition we have proposed would directly relate to determining whether a health and safety issue exists that must be identified, evaluated, and addressed through actions to reduce or eliminate the hazard. Furthermore it is similar to California Labor Code Section 6432, which states that a serious violation exists when "there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation." The definition proposed aligns with Cal/OSHA's standard because it focuses on whether actual or likely harm triggers regulatory concern, even if no injury has yet occurred. Moreover, material harm to physical health and safety of the employee directly aligns with whether an illness or injury could occur. Finally, the proposed definition limits the employer's obligation to act only to hazards they can control or are responsible for.

The proposed definition would focus on risk-based, preventative, and employee safety, whereas the penal code definition requires legal findings that employers are not authorized to make and sets a high threshold that may miss earlier, preventable harm and possibly discourage employees from reporting and supervisors acting on reports.

II. Post-Incident Response: Trauma Counseling Provision.
Subsection (c)(11)(C) requires employers to offer trauma counseling to affected employees following a workplace violence incident, but only "upon request." This limitation fundamentally shifts the burden of responsibility from the employers to the employees and creates barriers to accessing critical mental health support.

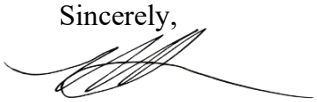
The "upon request" requirement places the burden on traumatized employees to recognize their need for counseling and actively seek it. Many employees lack awareness of available resources or the psychological impact of workplace violence. This approach forces advocates and union representatives to educate workers about requesting services that should automatically be offered. This responsibility should belong to employers.

Additionally, requiring employees to request trauma counseling can create stigma and potentially labels workers as psychologically vulnerable. Employees may fear that seeking mental health support could affect their job security, advancement opportunities, or workplace relationships. This chilling effect directly undermines the provision's protective intent.

Finally, the "upon request" language is redundant. The provision already specifies that employers must "offer" or "make available" trauma counseling, which inherently makes participation voluntary. Employees retain the right to decline offered services. The additional "upon request" requirement serves only to create a barrier while providing no additional employee protection.

Therefore, we recommend that Cal/OSHA eliminate the phrase "upon request" from the provision, requiring employers to offer trauma counseling to all affected employees affirmatively while preserving each employee's right to accept or decline these services.

Sincerely,



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