

April 4, 2018

TO: Kevin Graulich

FROM: California Chamber of Commerce  
California Association of Joint Powers Authorities  
California Beer and Beverage Distributors  
California Cotton Growers and Ginners Association  
California Framing Contractors Association  
California League of Food Producers  
California Professional Association of Specialty Contractors  
California Retailers Association  
Residential Contractors Association  
Western Agricultural Processors Association

Subject: Workplace Violence Prevention Discussion Draft - 12/4/2017 - Comments

The above-signed organizations (the Coalition) submit these comments regarding the discussion draft presented for consideration at the Advisory Committee meeting on January 25, 2018. The Coalition represents employers large and small across many diverse industries.

This proposed new rule must be considered in context of the complete scope of the many Cal/OSHA regulatory requirements that employers currently face. Additional requirements should be meaningful, enhance worker safety and be drafted so that employers can comply. Low- and no-risk employers should not be burdened by costly regulations while operating in an environment where they are unnecessary.

While any act of violence in the workplace is abhorrent, the risk of such acts is minimal in many workplaces. Rules should be reserved for situations where they are truly warranted. A reasonable method to assess risk must be applied to determine the extent of regulation.

Of primary concern is the complexity and difficulty presented by attempting to draft one regulation to fit all industries, covering all employers of all sizes with varying exposure to the risk of workplace violence across the state. The reality of the ability of all employers to evaluate and control for all potential scenarios is daunting. Each place of employment presents a unique set of circumstances that may or may not include a realistic risk of workplace violence.

Also of note is that Cal/OSHA meeting conveners stated that the general industry rule will not be more prescriptive than 3342, which we support. Furthermore, the conveners at times defended language in the discussion draft as its presence in 3342 being the justification for its inclusion in this draft. We strongly object because this proposed rule applies to a different scope, and general industry representatives were not included in the drafting of 3342 and should therefore not be subject to its provisions without consensus that the language is appropriate.

#### Coalition recommended revisions to the draft

Scope and Application. In order to limit unnecessary and burdensome regulations on small employers with little to no exposure to risk, the Coalition suggests the following exemption be included:

EXCEPTION 5: Employers whose operations have no exposure to Type I and Type 2 Violence may satisfy the requirements of this section by including appropriate and practicable workplace violence prevention as part of the Illness & Injury Prevention Program, including training, to prevent Type 3 and Type 4 Violence exposures.

Add Definition. All terms used in the draft that require employer compliance should be defined in regulation. Therefore, the coalition suggests a definition be added for workplace violence hazards. The draft requires

employers to identify, evaluate and correct these risks. This definition should be imported from section (d) Training, where it is not framed as a definition, but makes an assumption that its description applies:

“Workplace violence hazards” are workplace violence risks that employees are reasonably anticipated to encounter in their jobs.

Choice of document. This section is contradictory. The intent appears to be that employers have the option to include the plan in the company IIPP, or to maintain it as a separate, stand-alone plan. In order to make this clear, we recommend the following clarification:

- (a) Workplace Violence Prevention Plan.** As a separate stand-alone plan or As part of the Injury and Illness Prevention Program (IIPP) required by title 8, section 3203, 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 at all times. The written Plan may be incorporated into the written IIPP or maintained as a separate document, and shall include all of the following elements:

Revise employee involvement. Employers are responsible for providing a safe workplace. Responsible employers will include appropriate policies and procedures to protect employees on the job. A mandate for employees and their representatives to develop policy for employers is overly intrusive. While employees in many instances have good ideas to contribute, employers remain the responsible party in implementing compliant rules. Furthermore, employee representatives that are not employees should not have input into private employers’ business practices and policies. We recommend employee input be provided for, but that employers are not compelled to allow employees and individuals outside the company to dictate company policy, as follows:

(c) Workplace Violence Prevention Plan

- (2) Effective procedures to obtain ~~the active involvement of input from employees and their representatives~~ in developing and implementing the Plan, including their ~~participation in input~~ regarding identifying, evaluating, and correcting workplace violence hazards, designing and implementing training, and reporting and investigating workplace violence incidents.

Coordination with other employers. This provision is too broad, and furthermore redundant of existing requirements regarding multi-employer workplaces. Multi-employer workplace rules are very clear as to the responsibilities of each employer where more than one employer has workers in the same workplace. Therefore, this provision is unnecessary and will only serve to create confusion between the two provisions.

- ~~(3) Methods the employer will use to coordinate implementation of the Plan with other employers whose employees work in same workplace, where applicable.~~

Maintain confidentiality of investigations and personnel. The privacy and confidentiality of workplace violence matters are important to the victims as well as the witnesses during an investigation. These are highly sensitive and often frightening events for victims and may be concerned for their safety when reporting, while witnesses may also have safety concerns. In order to conduct a thorough investigation, witnesses and victims must feel comfortable and assured that their privacy will not be compromised – to the extent possible. Therefore, results of investigations must also be confidential along with the details of the investigation. Information shared with employees must be limited to aggregate or summarized information only and in no way identify the individuals involved. The rule needs to be specific that this information is held in the strictest confidence, and that includes any corrective action taken against an accused. To clarify this provision, corrective action shared with employees must be related to the workplace corrective actions taken, not personnel corrective action taken.

- (6) Procedures to communicate with employees regarding workplace violence matters that do not disclose confidential and identifying information about victims, witnesses and the accused, including: (A) How an employee can report a violent incident, threat, or other workplace violence concern; (B) How employees can communicate workplace violence concerns without fear of reprisal; (C) How employee concerns will be investigated, ~~and how employees will be informed of the results of the investigation and how employees will be informed of any corrective actions to be taken~~ to address workplace risks.

Recordkeeping and access to employer records. Recordkeeping requirements should be the same as those required by the IIPP. We are concerned that creating varying recordkeeping requirements for various programs will create confusion for employers, particularly when no necessity to exceed IIPP requirements has been demonstrated. In this section we reiterate our opposition to releasing investigation records that could identify employees or witnesses, as well as sensitive investigation information that could compromise employee trust to report incidents and to participate in an investigation. We suggest the following revisions to the draft language:

**(e) Recordkeeping.**

- (1) Records of workplace violence hazard identification, evaluation, and correction shall be created and maintained in accordance with title 8, section 3203(b)(1), ~~except that the exception to title 8, section 3203(b)(1) does not apply.~~
- (2) Documentation of training required by subsection (d) for each employee, including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for at least one (1) year.  
~~Training records shall be created 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. Title 8, section 3203(b)(2) EXCEPTION NO. 1 does not apply to these training records.~~
- (3) Records of workplace violence injury investigations conducted pursuant to subsection (c)(10) shall be maintained for a minimum of ~~five~~ one years. These records shall not contain "medical information" as defined by Civil Code Section 56.05(j).
- (4) All records required by this subsection shall be made available to the Chief on request, for examination and copying. Employer workplace violence records shall be held in the strictest confidence by the state agency and shall not be subject to Public Records Act requests.
- ~~(5) All records required by this subsection shall be made available to employees and their representatives, on request, for examination and copying in accordance with title 8, section 3204(e)(1) of these orders.~~

Conclusion

The Coalition is concerned that the discussion draft as proposed is unnecessarily burdensome. We have proposed revisions that would create a rule that employers would more likely be able to comply with, and would be enforceable. We continue to maintain that low risk industries should not be subject to the same requirements as high risk industries.

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