



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

March 29, 2018

Kevin Graulich
Senior Safety Engineer
Cal/OSHA- Research and Standards Occupational Health Unit

Via email: kgraulich@dir.ca.gov

Dear Mr. Graulich:

We appreciated the opportunity to participate in the advisory meeting on development of a Workplace Violence Prevention Standard for General Industry earlier this year. We strongly support the Division's decision to include all industries in this standard because workplace violence is a pervasive problem. This is also consistent with the Standard Board's decision to grant the amended Petition 542 Workplace Violence Prevention Standard in Education to cover all industries. However, to provide adequate protection to workers we conclude that the proposed regulation needs to include all the basic components in the Healthcare Violence Prevention Standard. Our comments on the discussion draft of December 4, 2017 follow. We also support the more detailed comments submitted by Worksafe.

Detailed comments

3343 (b) Definitions

For comprehensiveness, definitions for "Representative", "Engineering controls", "Environmental Risk Factors" and "Work practice controls" should be added. Engineering controls are not needed in or suited to all work settings but are vital in some, such as 24 hour convenience stores. Evaluation and mitigation of environmental risk factors and implementation of work practice controls are key components of any violence prevention plan. We recommend the following definitions:

"Representative" means any individual or organization to whom an employee gives written authorization to exercise such employee's right under this standard. Where there

is a recognized or certified collective bargaining agent, that individual shall be treated automatically as a designated employee representative without regard to written employee authorization.

“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 employee and the hazard. These include but are not limited to electronic access controls, weapon detectors, shatter resistant glass, locks on doors and personal alarms.

“Environmental risk factors” means factors in the work area that may contribute to the likelihood or severity of a workplace violence incident. These include but are not limited to working in isolation, inadequate illumination and collection of money or other valuable items.

“Work practice controls” mean procedures, rules and staffing which are used to effectively reduce workplace violence hazards.

We also recommend that the definition of “threat of violence” be broadened so it is not dependent on risk of physical injury. This is important both because psychological trauma and stress harm workers and because threats that do not initially result in physical injury can escalate if they are not addressed.

“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 his or her their safety because there is a reasonable possibility the person might be physically injured, and that serves no legitimate purpose.”

In addition, the definition of “Workplace violence” should 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. For comprehensiveness, the definition should also include stalking.

We recommend making the following changes to the definition:

“Workplace violence” means any act of violence or threat of violence that occurs at the worksite or while using employer supplied or arranged transportation or any threat of violence by a supervisor that occurs at employer supplied housing. . . .

. . . .
(C) Stalking 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 occurs during the course of employment.

3343 (c) Workplace Violence Prevention Plan

We strongly agree that the written plan should be available to employees at all times. In addition, a copy of the plan should be provided to any employee or their designated representative upon request, without charge, so they will be able to review it on their own time.

Workers are understandably often very uncomfortable about reporting threats or incidents of violence, especially sexual violence, so we recommend specifying that employers must have procedures for accepting reports in a manner that does not discourage reporting. Section (c)(4) should also specify that a person who is not an employee's direct supervisor should be designated to receive reports of workplace violence concerns, threats or incidents. This is very important in agriculture where Type 3 violence perpetrated by supervisors is the most common form of violence and can include sexual violence, retaliatory or disciplinary violence. The regulation should also specify that an employee who reports an incident to local law enforcement is protected from retaliation. We suggest the following language:

(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 designating a person who is not the employee's direct supervisor to receive reports of Type 3 violence and to prohibit retaliation against an employee who makes such a report to the employer or local law enforcement agency.

Section (c)(6)(A) Procedures for communicating how an employee can report a violent incident, threat or concern should include a requirement for 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.

A subsection (c)(6)(D) should be added to specify how an employee can report a violent incident or threat to local law enforcement or emergency services without fear of retaliation.

To better prevent violent incidents, subsection (c)(8) should be amended to require evaluation of workplace environmental risk factors as well as workplace violence hazards.

To be effective, a workplace violence prevention plan should also identify the controls employers will implement to help prevent or reduce the risk of workplace violence and timelines for correcting imminent and serious hazards. These

requirements are included in the health care violence prevention standard section 3342(c)(11). Basic language such as the language in the WPV prevention in health care standard should be included.

Therefore, we recommend adding the following language from the health care violence prevention standard:

(c)(9) 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, the employer shall take interim measures to abate the imminent or serious nature of the hazard while completing the permanent control measures.

In addition, as is required in the health care violence prevention standard 3342(c)(11)(I), all plans should require a response plan for actual or potential workplace violence emergencies that includes procedures to respond to active shooters by developing evacuation or sheltering plans that are appropriate and feasible for the worksite, a procedure for warning employees of the situation and a procedure for contacting the appropriate law enforcement agency. Development of these plans should not be costly or burdensome because, as a result of the tragic increase in active shooter incidents, many employers have already taken the initiative to develop programs and conduct training in active shooter response and law enforcement agencies are offering guidance and training assistance.

3343(d) Training

We strongly support the proposed requirement that training material appropriate in content and vocabulary to the educational level, literacy, and language of employees shall be used.

To supplement initial training we recommend that section (d)(1) should require periodic refresher training. In addition, (d)(2) should be expanded to require training in how to make a report to DFEH or local law enforcement and required training materials should include a list of resources for victims of violence.

A section (d)(4) should be added specifies that trainers must be knowledgeable in the subject matter and not have any record of perpetrating violence, including sexual harassment.

3343(e) Recordkeeping

Section (e)(3) should be expanded to require a log of violent incidents, post incident response and workplace violence incident investigations that omits personal identifying information, as is required in the Healthcare Violence Prevention Standard section 3342 (d). The regulation should also require that the log be reviewed as part of annual review of the workplace violence prevention plan. It is important that a log includes investigation of incidents whether or not they result in injury because this information can be crucial for identifying hazards, needed controls and training needs to prevent future incidents and injuries. A log is vital for identifying troubling patterns so they can be addressed before they escalate into a tragic incident.

We appreciate all the work that is going into developing this standard. Please contact us if you have any follow-up questions.

Sincerely,

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

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