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Sent Via Email

Re: Workplace Violence Prevention Standard- General Industry

We would like to extend our appreciation to the Advisory Committee for providing us with the opportunity to provide comments. We appreciate that there is a tremendous amount of work done by all stakeholders and government agencies involved when creating these standards. We also appreciate your consideration and inclusion of these comments and our comments made at the advisory committee meetings on January 12, 2017 and January 25, 2018. We are eager to move the process along in adopting a strong and effective standard with a broad scope to protect all workers in all industries from workplace violence.

Worksafe and its allies support the Board's decision to grant the amended Petition 542 Workplace Violence Prevention Standard (WVP standard) in Education to cover workplace violence in **all** industries.

While we were pleased with the decision to move forward with a standard covering all workplace violence in all industries, the current draft language does not adequately promote violence prevention. The required components of an WVP plan are weak and do not include adequate requirements for employers to assess environmental risks and workplace practices in developing a plan. A meaningful plan requires a proper assessment of the the risk factors present in the worksite.

The draft recordkeeping requirements also discourages a preventative approach, ignoring the need to monitor conduct that predicts violence, and instead limiting recording requirements to acts of violence that result in a significant injury. Such a limitation fails to capture highly traumatic violence that does not necessarily result in serious physical injuries, such as sexual assault, a glaring gap in the standard. An effective prevention plan should address all conduct that is a predictor of future violence and all violence that has an impact on worker safety, regardless of whether the conduct results in a significant injury.

The lack of employee participation in the development and monitoring of the plan is also a concern. Workers and their representatives play a key role in violence prevention, and should be involved in the development of the plan and have access to information about workplace

violence and threats of violence. When workers and their representatives are apprised of such information, employer, workers and representatives can work together - and this keeps everyone safe.

While we appreciate all of the work gone into drafting this standard, we were disappointed with several key elements missing from the draft. **We believe there are fundamental issues with the following sections: (1) Scope of the Rule;(2) Record Keeping; (3) Hazard Assessment, control measures and other issues in the WVP plan; (4) Training and ; (5) Definition of Representative.** We believe several key changes outlined below should be made in order to better focus on violence prevention.

I. Scope of the Rule

Workplace violence must be broadly interpreted in order for any WVP standard to effectively prevent workplace violence. The Board voted to “request [the] Division to develop a workplace violence prevention standard for General Industry as soon as possible, but no later than at the completion of the rulemaking effort regarding workplace violence in healthcare settings.”¹ All members present voted and the motion passed unanimously.

A. “Workplace Violence” and “Threat of Violence” Definitions

The proposal’s definition of “workplace violence” defines the scope of the rule, and must be broad enough to ensure coverage of all workers, including those without a fixed location, at non-traditional worksites, or who are in work-related situations that might not be considered a worksite, as may be the case in a stalking incident. By not clearly and explicitly covering these types of work settings, workers who experience workplace violence will unfortunately, not have the full protection of this standard. We want to ensure the definitions unambiguously cover all incidents within the scope of employment, especially when workers are without a fixed location in non-traditional worksites, or during work-related travel such as employer-provided or arranged transportation and lodging.

We have examples reported to us of workers being assaulted while in transit to work. For example a “raitero” or “driver” comes to pick up a group of workers. The workers are harassed and/or physically threatened while in transit to the jobsite. This type of ride to work arrangement is also prevalent in other sectors, like agriculture. Some agricultural workers live on the agricultural establishment, and migrant workers may be housed in motels by the employer. Workers who are in these types of live-work arrangements should have the protections of a WVP standard to explicitly protect them from Type 3 violence by employers or supervisors at employer-provided housing.

We suggest adding language to clarify that these requirements apply to both fixed and non-fixed worksites. Although we understand the WVP in health care standard’s use of “worksite” covers both fixed and non-fixed worksites, we want to ensure the general WVP standard applies broadly to the many dynamic situations that will be encountered in general industry.

¹ Cal. Occupational Safety and Health Stds. Bd., Minutes from June 2015 Standards Board Meeting (June 18, 2015) p. 14.

The definition of “threat of violence,” a sub-part of the definition of “workplace violence,” should also be broad, and we want to make sure it covers conduct such as stalking. Stalking and other conduct known to be a predictor of sexual violence should be unambiguously included in the scope of this standard. Stalking has been identified as the most prevalent form of abuse at work.² An estimated 15.2% of women have experienced stalking that made them fearful or made them believe that they or someone close to them would be harmed or killed during their lifetimes.³ Sexual violence, domestic violence, sexual violence, and stalking are pervasive in all demographics and impact every workplace.⁴ According to the Center for Disease Control and Prevention, an estimated 60.8% of stalking victims are stalked by a current or former intimate partner.⁵ Domestic violence can enter the workplace and become an occupational health issue when a perpetrator shows up at a person’s work and makes a threat, when a survivor of domestic violence is followed to work by the abuser, or when a customer stalks a worker.

Allies’ reports also reveal that gender motivated violence occurs in the workplace in instances where the aggressor makes threats towards the worker’s family or friend. Examples of such threats were included in a report published by the Labor Occupational Health Program at the University of California, Berkeley. In that report, an undocumented janitor called Erika described when her supervisor, Raul, threatened to fire her if she did not have sex with him, and then went on to threaten her children. Raul said, “I know where you live, who takes care of your kids, and what time you pick them up.” These types of threats made against one’s family can certainly cause physiological trauma, which we want to ensure is covered when interpreting the meaning of “threat of violence.” One of Erika’s coworkers also “quit, sobbing, without even

² Reeves & O’Leary-Kelly, *A Study of the Effects of Intimate Partner Violence on the Workplace* (2009) pg. 3.

³ Centers for Disease Control, National Center for Injury Prevention and Control, *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization - National Intimate Partner and Sexual Violence Survey, United States, 2011* (Sep. 5, 2014) Morbidity and Mortality Weekly Report <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e#Table4> (as of March 28, 2018).

⁴ Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Intimate Partner Violence: Consequences* (Aug. 22, 2017) <<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html>> (as of March 29, 2018); Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *NISVS Infographic* (Apr. 28, 2017) <<https://www.cdc.gov/violenceprevention/nisvs/infographic.html>> (as of March 27, 2018).

⁵ Centers for Disease Control, National Center for Injury Prevention and Control, *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization - National Intimate Partner and Sexual Violence Survey, United States, 2011* (Sep. 5, 2014) Morbidity and Mortality Weekly Report <<https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm>> (as of March 28, 2018).

taking her check,” after Raul grabbed her, followed her, and then threatened her family.⁶ Thus, it is important to have a broad interpretation of “threat of violence” so as to capture threats which are hazards in themselves and warning signals. The New York State Department of Labor’s Public Employer Workplace Prevention Program regulations broadly defines workplace violence and explicitly includes stalking in its guidelines.⁷ Thus, we must include language to address those types of threats of violence.

We also suggest changing the words ‘his or her’ to employee or person. Including this language is important because it broadens the scope of application to include non-binary identifying people. This is important to recognize given the ways in which non-binary, gender non-conforming, and transgender identifying people may experience workplace violence.⁸ For example, a Restaurant Opportunities Center report based on worker surveys found 60% of women and transgender people and 40% of men face harassment at work in restaurants. Forty percent of transgender people, 30% of women, and 22% of men reported being touched inappropriately at work.

Therefore, we recommend the following language:

“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 lodging. The term workplace violence shall not include lawful acts of self-defense or defense of others. Workplace violence includes the following:

(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;

(B) An incident involving the threat or use of a firearm or other dangerous weapon, including the use of common objects as weapons, regardless of whether the employee sustains an injury;

⁶ Chen et. al., *The Perfect Storm: How Supervisors Get Away with Sexually Harassing Workers who Work Alone at Night* (May 2016) Labor Occupational Health Program - University of California, Berkeley (2016) pg. 4.

⁷ Public Employer Workplace Violence Prevention Programs, 12 NYCRR PART 800.6. “Workplace Violence. Any physical assault or acts of aggressive behavior occurring where a public employee performs any work-related duty in the course of his or her employment including but not limited to: (i) An attempt or threat, whether verbal or physical, to inflict physical injury upon an employee; (ii) Any intentional display of force which would give an employee reason to fear or expect bodily harm; (iii) Intentional and wrongful physical contact with a person without his or her consent that entails some injury; (iv) Stalking an employee with the intent of causing fear of material harm to the physical safety and health of such employee when such stalking has arisen through and in the course of employment.”

⁸ The Restaurant Opportunities Centers United, *The Glass Floor: Sexual Harassment in the Restaurant Industry* (Oct. 7, 2014) <http://rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf> (as of Mar. 28, 2018).

(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.

(D) Four workplace violence types:

(1) "Type 1 violence" means workplace violence committed by a person who has no legitimate business at the work site, and includes violent acts by anyone who enters the workplace with the intent to commit a crime.

(2) "Type 2 violence" means workplace violence directed at employees by customers, clients, patients, students, inmates, or visitors.

(3) "Type 3 violence" means workplace violence against an employee by a present or former employee, supervisor, or manager.

(4) "Type 4 violence" means workplace violence committed in the workplace by someone who does not work there, but has or is known to have had a personal relationship with an employee

Therefore, we also recommend enhancing the current definition of threat of violence with the following language:

“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.”

B. Injury definition

One of the biggest concerns with this current draft is the narrow scope of the rule’s recordkeeping requirements. Under the current proposal employers are only required to maintain a log of violence resulting in an “injury.” The way injury is currently defined limits injuries to only those meeting the recording criteria listed in title 8, section 14300.7(b)(1) (injuries reportable under Log 300). The purpose of recordkeeping is to help ensure and encourage the employer to address violence when it occurs and take steps to prevent future violence. Without recordkeeping, neither management, employee representatives or Cal/OSHA can understand the scope and nature of violence in a workplace. Limiting reporting in this way is inconsistent with the purposes of identifying workplace violence and taking remedial steps to prevent it.

The narrow definition of injury is problematic because as we know workplace violence, even if very egregious, may not always result in an injury that results in first aid, days away from work or a “significant” injury diagnosed by a physician.⁹ In 2009, approximately 572,000 nonfatal violent crimes (rape/sexual assault, robbery, and aggravated and simple assault) occurred against persons age 16 or older while they were at work or on duty.¹⁰ Of those 572,000 nonfatal violent

⁹ 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.

¹⁰ Harrell, *National Crime Victimization Survey 2009* (March 2011) United States Department of Justice <<https://www.bjs.gov/content/pub/pdf/wv09.pdf>> (as of Mar. 28, 2018).

crimes, not all would fall under the definition of injury as currently drafted in the standard, which follows the limitations laid out in the Log 300 definition of recordable injury.¹¹

If an employee is punched in the face, for example, that should be logged as a workplace violence incident regardless of whether it resulted in “just” a black eye requiring an ice pack. If an employee is held down and sexually assaulted at work, it should be logged regardless of the degree of physical injury suffered by the survivor. Incredibly, such assaults may not be recordable under the current language. Relying on degree of injury as a criteria for logging incidents of violence essentially renders the reporting requirement meaningless, and simply is not rational given the purpose of such recordkeeping.

The National Electronic Injury Surveillance System occupational supplement (NEISS-Work) used a stratified probability sample of U.S. hospitals and interviewed workers about their workplace violence experience.¹² The victims identified in the NEISS-Work data collection voluntarily completed interviews detailing their workplace violence experiences.¹³ They found the majority of workplace violence injuries treated in emergency departments resulted from simple assaults that did not involve any lost time from work.¹⁴ Thus, relying on existing legal requirements under the Log 300 requirements may not be sufficient to track, record and thereby prevent workplace incidents.

Limiting recordkeeping requirements to incidents resulting in injury also conflicts with the importance of employers taking a proactive and preventative approach to workplace violence. An employer taking a proactive approach to preventing workplace violence has to first understand the problem by documenting in some manner incidents of violence or potential violence. Employers are much less likely to put in place the procedures required by the standard to effectively address all workplace violence incidents if only required to track those resulting in certain types of injury. Having a procedure to address all workplace violence incidents and recording such incidents in a log is a feasible and effective measure to ensure compliance with the standard and will help keep people safe while at work. To require employers to respond to workplace violence and threats of violence without any documentation requirement is an invitation to ignore this standard.

Allies have shared with us that their members have experienced workplace violence incidents which would not need to be recorded on a Log 300 but nevertheless created a dangerous and violent workplace environment. For example, Veronica Alvarado, Coordinator with the Warehouse Worker Resource Center, reports of workers being locked in warehouses, stalked by supervisors or an intimate partner, and receiving threats of violence against them or their family members. This type of workplace violence would not be documented under the proposed language.

¹¹ Cal. Code Regs., tit. 8, § 14300.7, subd. (b)(1)(A)-(F).

¹² Hartley et. al., *Non-fatal workplace violence injuries in the United States 2003–2004: A follow back study* (2012) Work <<https://content.iospress.com/articles/work/wor01328>> (as of March 28, 2018).

¹³ *Id.*

¹⁴ *Id.*

Another example of workplace violence which may not rise to the level ‘injury’ as currently defined is seen in the type of harassment endured by hotel housekeepers. In its report “*Hands Off Pants On*”, Unite HERE surveyed 500 workers in Illinois. Fifty-eight percent of hotel housekeepers and 77% of casino workers reported being sexually harassed.¹⁵ Sixty-five percent of cocktail servers reported having had a guest touch them or try to touch them (kissing, patting, touching, groping).

The Southern Poverty Law Center (SPLC) interviewed immigrant women working in food processing for its report, “*Injustice on Our Plates*.”¹⁶ In its report, virtually all women reported that sexual harassment and threats in the workplace is a serious problem. It reported “in a recent study of 150 women of Mexican descent working in the fields in California’s Central Valley, 80% said they had experienced sexual harassment. That compares to roughly half of all women in the U.S. workforce who say they have experienced at least one incident.”¹⁷

These workers’ experiences demonstrate the pervasiveness of sexual harassment. While not all forms of sexual harassment fall within the scope of this rule, there will be conduct, especially when directed at particularly vulnerable workers such as hotel housekeepers, janitors and agricultural workers, that constitutes a safety threat and should fall within any plan intended to prevent workplace violence when it constitutes a “threat of violence” as defined in our comments, above.

Therefore, our proposed solution is to simply eliminate the use of the term “injury” in the definitions and to incorporate language requiring the employer to keep a violent incident log.¹⁸ Eliminating any reference to injuries would require reporting on all workplace violence (including threats), regardless of degree of injury.

II. Recordkeeping

This WVP in general industry standard should include similar recordkeeping requirements and broader access for employees and representatives to such records as those included in the WVP in health care standard.¹⁹ One sure way workers stay informed about trends or potential red flags is when they have access to an incident log covering the full spectrum of workplace violence.

A. Recordkeeping requirements should cover all incidents that warrant assessment or preventive measures

¹⁵ *Hands Off Pants On: Sexual Harassment in Chicago’s Hospitality Industry* (July 2016) <<https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf>> (as of Mar. 8, 2018).

¹⁶ Bauer et. al., *Injustice on Our Plates*, Southern Poverty Law Center (Nov. 2010) <<https://www.splcenter.org/20101108/injustice-our-plates>> (as of March 28, 2018).

¹⁷ *Id.*

¹⁸ See Workplace Violence Prevention in Health Care, Cal. Code of Regs., Tit. 8 § 3342 (d).

¹⁹ *Id.*

In order for that access to be meaningful, the content of the log must include a wide spectrum of workplace violence behaviors. We believe that as opposed to near misses as mentioned in the advisory committee meeting on January 25, 2018, which are not required to be on a log, a threat of violence is different and should be captured on a log. A threat of violence is in itself the harmful act. If employers are not effectively and accurately tracking these incidences they will not be able to effectively implement control measures to prevent workplace violence. And if workers and their representatives do not have access to the information on these logs, they cannot effectively advocate for necessary changes in their workplace to protect themselves or other co-workers.

Other professionals and government agencies have recommended that employers keep records of workplace violence to better prevent violence from occurring. For example, management-side attorney Martha Boyd published an article with the Society for Human Resource Management titled “Preventing Workplace Violence: 10 Critical Components of a Security Plan,” in which she recommended that employers “[p]urchase a simple logbook from an office supply store or record [the] data in a spreadsheet. [The] security plan should detail where this log will be kept and who will be responsible for updating and reviewing it.”²⁰

The Washington Division of Occupational Safety and Health has also stated that “[r]ecord keeping is essential to the success of a workplace violence prevention program. Good records help employers determine the severity of the problem, evaluate methods of hazard control, and identify training needs.”²¹ These recommendations demonstrate that stakeholders, even those advocating for the interests of employers, believe recording workplace violence is in the interests of both employers and employees.

B. Employee and Employee Representative Access to Records is Essential for Worker Involvement

Employee and representative access to a log allows everyone, employers, workers and their representative access to work together to identify trends, warnings, and possible solutions to reduce and prevent the risk of workplace violence. Additionally, keeping a log and investigation records allows the employer to have a central location to track workplace violence warning signs instead of in personnel files which may get lost. Employee and representative access and the ability to review the log off-site is also extremely important especially when workers may fear retaliation or intimidation. Thus, we urge the Division to include access to the violent incident logs to both the employee and their representative.

²⁰ Boyd, *Preventing Workplace Violence: 10 Critical Components of a Security Plan*, Society for Human Resource Management (Sep. 29, 2017) <<https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/preventing-workplace-violence-security-plan.aspx>> (as of Mar. 14, 2018).

²¹ Washington Division of Occupational Safety and Health, *Workplace Violence: Awareness and Prevention for Employers and Employees* (Oct. 2015) <<http://www.lni.wa.gov/IPUB/417-140-000.pdf>> (as of Mar. 29, 2018).

Although the current draft includes employee access to the plan it does not extend this right to the employee representative. We believe employee representative access to the plan is important especially for workers who fear intimidation or retaliation if they request any information from their employer. The employee representative serves as a trusted agent of the worker and is in the best position to help such workers advocate for improved conditions at their workplace. Because of this established trust worker representatives possess, they can help workers shepardize the process of requesting the plan and advocate for off-site review of the plan. This is important because in some work settings it might be intimidating and/or infeasible to review the plan on-site. Furthermore, we see a disconnect between the lack of employee representative access language and the language in the section requiring “active worker and representative” involvement in the development of the plan. If worker representatives do not have access to said plan, they cannot meaningfully and truly play an active role in the development of the WVP plan.

C. There are no suitable alternatives to employers logging incidents of violence

We understand some data related to non-fatal injuries may be available in workers’ compensation data. It has been suggested that access to this data could be a substitute for employers maintaining records of injuries broader than existing Log 300 requirements. Although a potentially useful evaluation tool, workers’ compensation data would still fail to include incidents such as stalking, threats, or intimate partner violence not resulting in an “injury” as defined by workers’ compensation, and it does not accomplish the goals of encouraging the employer to proactively address incidents before they escalate and provide a written record that would help ensure accountability. There is simply no existing data source that would be an adequate substitute for an incident log.

Therefore we suggest the following language with respect to recordkeeping:

(e)(3) Records of violent incidents, including but not limited to: workplace violence injury investigations conducted pursuant to subsection(c)(10) and violent incident logs required by subsection (d), shall be maintained for a minimum of five years. The employer shall omit any element of personal identifying information sufficient to allow identification of any person, such as the person’s name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the person’s identity prior to releasing any copies of these documents.

Additionally, we suggest the following language with respect to access to the WVP plan:

(c)The Plan shall be in writing and shall be available to employees and their (qualified) representative at all times.

III. Hazard Assessment, Control Measures and other issues in the Workplace Violence Prevention Plan

Unlike the recently adopted WVP standard in health care (and contrary to basic health and safety principles), the proposal for general industry WVP does not include a robust hazard assessment process or the adoption of specific control measures to address the hazards that are identified. As

such the definitions for engineering controls, environmental risk factors and work practice controls should follow the definitions for these terms in the WVP in health care regulation.²² The more specific a plan is in assessing hazards, the more effective corrective measures can be. Moreover, the hazard assessment and correction should be industry specific following the WVP standard in health care.²³ The federal Occupational Health and Safety Administration has said that “identifying and assessing hazards is the foundation of a successful violence prevention program.”²⁴ Thus, we urge the Division to include definitions for the above and within the employers’ WVP plan.

A. Environmental Risk Factors Assessment

Environmental factors such as physical space – this occurs with hotel housekeepers and janitors where many of them are in charge of covering multiple rooms or floors – must also be assessed. UC Berkeley Labor Occupational Health Program’s report reveals that workers in the janitorial services, who are disproportionately immigrants and women of color, are particularly vulnerable to sexual assault and violence at work.²⁵ Many often work at night and in isolation. This isolation from co-workers and the public reduces the likelihood that anyone will intervene or witness assaults against them, and allows harassers to exert even greater control over workers. Lilia Garcia-Brower, Executive Director of the Maintenance Cooperation Trust Fund (MCTF), a California multi-stakeholder industry watchdog group that works with janitors quoted in the report, stated that “in her experience, as many as three quarters of janitors experience sexual harassment.”²⁶

Again, when there is no system set up for two way in-person communication between a worker and the supervisor (or with a buddy), it makes it quite difficult for workers to touch base and check in to ensure safety. An employer should be required to identify and evaluate and ultimately implement necessary control measures to eliminate or reduce such environmental risks.

²² Cal. Code of Regs., Tit. 8 § 3342 (b) “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, personal alarms. Environmental risk factors mean 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 practices controls mean procedures, rules and staffing which are used to effectively reduce workplace violence hazards.”

²³ Cal. Code of Regs., Tit. 8 § 3342 (c).

²⁴ Occupational Safety and Health Administration, Guidelines for Preventing Workplace Violence for Healthcare and Social Workers (2016) <<https://www.osha.gov/Publications/osh3148.pdf>> (as of Mar. 29, 2018).

²⁵ Chen et. al., *Perfect Storm: How Supervisors Get Away with Sexually Harassing Workers Who Work Alone at Night*, Labor and Occupational Health Program - University of California, Berkeley (2016) p. 3-6.

²⁶ *Id.*

Therefore, we recommend the following language:

“(c)(8) Procedures to identify and evaluate workplace violence hazards and environmental risk factors.

B. Engineering and Workplace practice controls

An effective WVP plan must identify the engineering and workplace practice controls the employer will implement to help prevent or reduce the risk of workplace violence. Imminent hazards and timelines for correcting hazards are missing plan requirements. This is important because once the employer has done an effective hazard assessment the next logical step is to develop controls to either eliminate the hazard or provide a barrier between the worker and the hazard.

For example, in the cases where workers are in isolation, like in agricultural, janitorial or hotel housekeeping, simple and feasible engineering controls include providing workers with a panic button or alarms. Public policy is already moving in this direction as legislation in other states and more recently in California has been introduced mandating panic buttons for hotel housekeepers.²⁷ Workers in janitorial, agricultural, and other industries like warehousing, often work in early morning or late hours when illumination may be poor. Workers in these industries and in hotels are often isolated for hours with very little contact with other employees and are required to cover large physical spaces. Workers can face limited or reduced risk of workplace violence if employers incorporate workplace practice controls. A feasible workplace control for the hazard of workplace violence in the above settings would be to incorporate a buddy system, hire more personnel and/or cover a smaller work area.

This basic language requiring a deeper analysis of the specific types of hazards, like environmental hazards in the workplace and incorporation of stronger control measures to prevent and reduce workplace violence, are critical to an effective plan. These basic steps can ensure both employers and workers understand the hazard of workplace violence and the employers’ control measures to prevent and reduce the risk of a workplace violence incident. We suggest including language similar to what is drafted in the WVP in health care regulation.

Therefore, we recommend the following language:

(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

²⁷ Assem. Bill No. 1761, (2017-2018 Reg. Sess.) § 6403.7; See also McHeegan, *For New York Hotel Staff, Panic Buttons and Big Raises*, The New York Times (Feb. 7, 2012) <<http://www.nytimes.com/2012/02/08/nyregion/city-hotel-workers-to-be-issued-panic-buttons.html>> (as of Mar. 28, 2018); Daniels, *California proposes hotel ‘panic button’ bill to protect workers from assaults, sex harassment*, CNBC (Jan. 3, 2018) <<https://www.cnbc.com/2018/01/03/california-hotel-panic-button-bill-seeks-to-protect-workers-from-assaults.html>> (as of Mar. 29, 2018).

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.

C. Plan must be in effect at all times

Any workplace violence prevention plan should 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. The Standards Board appeared to share this belief at least in health care workplaces when it made the initial proposal for the WVP in health care standard, because the Board included language stating that employers covered by the section “shall establish, implement and maintain an effective workplace violence prevention plan (Plan) that is in effect at all times in every unit, service, and operation.”²⁸ That language remained in the final draft of the WVP in health care standard, and there is no reason why that language should not be included in this standard.

Therefore we recommend: “As part of the Injury and Illness Prevention Program (IIPP) required by Section 3203, the employer shall establish, implement and maintain an effective workplace violence prevention plan (Plan) that is in effect at all times.”

D. Plan must be reviewed

The proposal is also missing an employer obligation to review the plan which is included in the WVP in health care standard. Regular review of a workplace violence plan is endorsed by federal OSHA, and Cal/OSHA in the WVP in health care standard.²⁹ The reasons for such a requirement are clear: there are any number of conditions and factors, such as employees, equipment, etc., that can change in a workplace. Those changes necessitate reevaluation to identify deficiencies and take corrective action. Therefore, we urge the Division to include this requirement and follow the language in the WVP in health care standard.

E. Plan must require employer created procedures for reporting violence

The employer should be responsible for creating procedures for reporting all types of violence, but especially “Type 3 violence” under (c)(4), involving supervisor perpetrated workplace violence. It is extremely important to set up procedures for workers to report to someone other than their direct supervisor. This is especially important in situations where the perpetrator of the workplace violence is also the direct supervisor. This will also help alleviate some of the stress and fear of retaliation workers feel when complaining about workplace violence to their employer.

²⁸ Cal. Occupational Safety and Health Stds. Bd., Proposed WVP Prevention in Health Care Standard <<https://www.dir.ca.gov/oshsb/documents/Workplace-Violence-Prevention-in-Health-Care-proptxt.pdf>> (as of Mar. 29, 2018).

²⁹ *Id.*

In the PBS-Frontline special *Rape on the Night Shift*, one janitor reported being sexually assaulted by her supervisor when he pinned her in a supply closet, verbally abused her, assaulted her, and tore her clothes off in his attempt to rape her. Another janitor reported being sexually assaulted by the same supervisor. Neither employee ever reported these violations. But his behavior was well known to employees.

In another PBS Frontline documentary *Rape in the Fields*, survivors, employers, and government agency officials are interviewed and vividly show the human cost of this abuse.³⁰ One farmworker bravely reported that she was raped three times at gunpoint by her supervisor. He threatened to have her fired if she said anything about the incidents. She eventually turned to a rape crisis center for assistance. The crisis center reported it to the EEOC, which brought a civil suit against the employer, a large, diversified Salinas Valley agribusiness. Although she was successful in her suit, the case demonstrates the terror and violence many women like her face while working. Human Rights Watch interviewed farm workers, employers, and government agency officials and found that sexual harassment and violence is so common it is almost “part of the job.”³¹ Thus, requiring employers to set up a procedure for reporting to someone other than a supervisor is crucial to help prevent situations like the ones above.

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:

Therefore we recommend the following changes:

“(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.”

F. Plan must have procedures for reporting violence or threats of violence without fear of retaliation

The current draft language does not explain how employers will be required to set up procedures for reporting violence or threats of violence without fear of retaliation. Workers must understand if they report a workplace violence threat, incident, or other concern that they will not be retaliated against for doing so. It is also the employer responsibility to ensure workers are informed of this right. From our previous report, we know retaliation for exercising health and

³⁰ 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 Mar. 8, 2018).

³¹ *Cultivating Fear: The vulnerability of immigrant farm workers to sexual harassment and violence*, Human Rights Watch <<https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual>> (as of Mar. 29, 2018).

safety rights is very pervasive in the workplace, especially for low-wage and immigrant workers.
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Workplace violence in itself is a barrier for survivors to come forward and report. Many workers do not share or report their stories for fear of reliving the trauma or being associated with the stigma. Immigration status is a huge barrier for some workers to report, as the fear of immigration based retaliation is very real and pervasive. Immigrants, especially Latina immigrants are especially vulnerable to acts of violence. Many times, reports of sexual assault are not filed by non-citizen immigrant Latinas out of fear of deportation.³³ Thus, it is important to include language related to informing workers about their right to report workplace violence without retaliation.

Therefore, we recommend the following changes:

“(c)(6) (A) How an employee can report a violent incident, threat, or other workplace violence concern without fear of reprisal.”

G. Plan must include how workers can report violent incidents to law enforcement without retaliation

Language on how to turn to law enforcement must be added to this draft proposal. This is particularly important to ensure workers are informed of this right especially given some communities mistrust of law enforcement or any governmental agency, especially federal government anti-immigrant/people of color enforcement. Language similar to the WVP in health care requiring the employer to provide information to an employee on how to report workplace violence to local law enforcement is crucial to supporting workers who have experienced workplace violence. And more importantly that they can turn to law enforcement without fear of reprisal.

It is also important to ensure an affected employee is aware of their right to make a police report about a violent incident and to also ensure employees have a record of the reporting of the incident. Employers should be required to verify they have given the complainant a form, created by the Division with such information. This will ensure workers are given the necessary information they need to post complaint.

Therefore, we recommend the following language:

“(c)(6)(D) How an employee can report a violent incident or threat to local law enforcement without fear of reprisal.”

Additionally, we recommend the following insertion:

³² Trang, *Improving OSH Retaliation Remedies for Workers: A Worksafe Report* (June 2015)

<http://www.worksafe.org/resources/retaliation/23_Improve_OSH_Retaliation_Remedies_for_Workers.pdf> (as of Mar. 12, 2018).

³³ *Id.*

(c)(10) Procedures for response to and investigation of complaints and injuries including completion of a form created by the Division that explains an employee's right to make a police report 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. 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.

H. Plan must include language on employers' responsibility to alert workers to threats

Language on employers' responsibility to create an effective means to identify and be alerted to threats must be included. Workers must know how the employer intends to alert them to threats in the workplace. If they are not informed of the presence, location, and nature of a security threat, workers will be left vulnerable and susceptible to workplace violence. If alarms or process are not effective, again workers will be left vulnerable. Others have already implemented or introduced policies to ensure employers are setting up effective means to alert workers to security threats. In 2012, operators of several large hotels in New York City agreed to provide hotel housekeepers with panic buttons they could carry on their person, after allegations of sexual assault committed by high-profile guests were made public.³⁴ California legislators have also recognized the efficacy of such an approach by recently introducing legislation in February of this year that would mandate panic buttons for hotel housekeepers across the state.³⁵ Thus, we urge the Division to adopt language similar to the language in the WVP in health care.

Therefore, we recommend adding the following language to this subsection:

“(c)(9)(A) Creating an effective means by which employees can be alerted to the presence, location, and nature of a security threat.”

I. Plan must include language on active shooter response

We believe it to be absolutely necessary to include language around training in response to active shooters, especially given the alarming increase in such incidents. According to the Bureau of Labor Statistics 79% of workplace homicides in 2016 involved shootings.³⁶ Active shooter

³⁴ McGeehan, *For New York Hotel Staff, Panic Buttons and Big Raises*, The New York Times (Feb. 7, 2012) <<http://www.nytimes.com/2012/02/08/nyregion/city-hotel-workers-to-be-issued-panic-buttons.html>> (as of Mar. 28, 2018).

³⁵ Daniels, *California proposes hotel 'panic button' bill to protect workers from assaults, sex harassment*, CNBC (Jan. 3, 2018) <<https://www.cnbc.com/2018/01/03/california-hotel-panic-button-bill-seeks-to-protect-workers-from-assaults.html>> (as of Mar. 14, 2018).

³⁶ Department of Labor, Bureau of Labor Statistics, *There were 500 workplace homicides in the United States in 2016* (Jan. 23, 2018) <<https://www.bls.gov/opub/ted/2018/there-were-500-workplace-homicides-in-the-united-states-in-2016.htm>> (as of Mar. 29, 2018).

situations are not limited to schools. Last month a gunman killed three employees at Veterans Home of California-Yountville.³⁷ We do not need the requirements or the plan to be burdensome. The WVP in healthcare standard requires this to be a component of the plan and training. We can use that as a model or template. In fact, many workplaces are already doing active shooter training.³⁸ The training requirement to respond to active shooters is not overly burdensome for employers who are already taking steps to ensure workplace safety with respect to active shooters.³⁹

Therefore, we recommend the following language:

(c)(9)(B) Establishing an effective response plan for actual or potential workplace violence emergencies that includes obtaining help from facility security or law enforcement agencies as appropriate. Employees designated to respond to emergencies must not have other assignments that would prevent them from responding immediately to an alarm to assist other staff. The response plan shall also include procedures to respond to mass casualty threats, such as active shooters, by developing evacuation or sheltering plans that are appropriate and feasible for the facility, a procedure for warning employees of the situation, and a procedure for contacting the appropriate law enforcement agency.

IV. Training

Training must cover all employees, including contingent/contracted employees, and should be in person. With respect to temporary or contingent workers, we have reports of examples of employers not training all workers where there is a dual employer setting, or temporary workers receiving less information about the hazards they are exposed to at work. Thus, ensuring temporary and contingent workers receive such training will be vital to violence prevention.

Additionally, in-person training is important because it allows for interactive and meaningful discussion, something not easily available in webinar settings. Plus, not all workers can easily access and understand webinar formatted trainings. Thus, the standard must require in-person training for optimal learning outcomes for workers. The standard may allow for webinar and e-learning training methods, as defined in Cal. Code of Regs., tit. 2, section 11024(a)(2), but only

³⁷ Knickmeyer & Harr, *Gunman in California Vet Center Shootings was former patient*, Associated Press (Mar. 16, 2018)<<https://apnews.com/6975feb06fff47aca7e5e41cd72f98f5/3-workers-killed-at-California-veterans-center,-gunman-dead>> (as of Mar. 29, 2018).

³⁸ Rosenwald, *Active-shooter training for office workers used to be about hiding. Not anymore*, The Washington Post (Dec. 20, 2015) <https://www.washingtonpost.com/local/active-shooter-training-for-office-workers-used-to-be-about-hiding-not-anymore/2015/12/19/22c08a3e-a351-11e5-b53d-972e2751f433_story.html?utm_term=.ddb315e2eefe> (as of Mar. 29, 2018).

³⁹ Noguchi, *At many workplaces, training for a new threat: Active Shooters*, National Public Radio (Feb. 11, 2016) <<https://www.npr.org/2016/02/11/466416680/at-many-workplaces-training-for-a-new-threat-active-shooters>> (as of Mar. 29, 2018).

as supplemental tools in conjunction with in-person instruction. Webinar and e-learning training methods may not, by themselves, fulfill the requirements of this subchapter.

Therefore we recommend the following language:

“Training. The employer shall provide effective in-person workplace violence prevention training to a covered worker or supervisor by a qualified trainer who is physically present in the room to present information, lead discussions, and respond to questions as specified in subsections (d)(1) and (d)(2).”

Similarly, relying on the expertise of workers and providing workers with the opportunity to be meaningfully involved in the process of developing and piloting training programs helps ensure accessibility and gives workers the ability to develop worker based and practical solutions for their own workplaces. Worker representatives play a key role as well and many worker reps have the practical experience in the work environment and can offer their expertise and help shepherd workers and employers through developing and piloting training program, and giving feedback where needed.

This model of interactive training has also been required in parallel California training standards, including Cal/OSHA standards addressing violence prevention in healthcare settings, bloodborne pathogens, and aerosol transmissible diseases.⁴⁰ Federal OSHA has also stated that it “believes the effectiveness of training is enhanced by trainer/trainee interaction.” Therefore, active worker and representative involvement is paramount to the efficacy of any training curricula.

Therefore, we recommend adding the following new subsection (d)(5) and language:

“(d)(5)The employer shall have an effective procedure for obtaining active involvement of employees and their representatives in developing training curricular and training materials, participating in training sessions and reviewing and revising the training program.”

Lastly, the individual providing the training must be qualified to do so. This is important because we have heard of reports of examples where supervisors who are perpetrating the violence are conducting workplace trainings or where the attorney representing the company provides a compromised sexual harassment prevention training to workers. This poses an obstacle for workers to receive unbiased training that will help them navigate both prevention and reporting incidences of workplace violence. 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. Additionally, setting parameters for trainers ensures the person conducting the training is knowledgeable in the subject matter.

⁴⁰ Cal. Code of Regs., Tit. 8 § 3342 (e) “The employer shall have an effective procedure for obtaining active involvement of employees and their representatives in developing training curricular and training materials, participating in training sessions and reviewing and revising the training program”; Bloodborne Pathogen Standard, Cal. Code of Reg., Tit. 8 §1910.1030 (g)(2)(G) “Information and Training: The training program shall contain at the minimum the following elements . . . (G) (14) Interactive questions and answers with the person conducting the training session.”

Therefore, the following language should be added under a new subsection (d)(4): A definition of qualified trainer should be added to include:

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)⁴¹ 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.

Lastly, 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.

Therefore we recommend the following language:

(d)(2): Initial training shall address the workplace violence hazards identified at the workplace, the corrective measures the employer has implemented, an explanation of the employers’ workplace violence prevention plan, how to seek assistance to prevent or respond to violence, strategies to avoid physical harm, and how to report workplace violence incidents or concerns to the employer without fear of reprisal. How to contact other agencies such as DFEH or law enforcement without fear of reprisal. How to contact support publically available resources for victims of violent crimes.”

V. Representative definition

Finally, the standard should include a definition of employee representative that permits employees to elect a representative where there is no collective bargaining agent.

⁴¹ Substance Abuse and Mental Health Svcs. Admin., (SAMHSA), Concept of Trauma-Informed Approach (April 14, 2015) <<https://www.samhsa.gov/nctic/trauma-interventions>> (as of March 29, 2018) “A program, organization, or system that is trauma-informed: (1) Realizes the widespread impact of trauma and understands potential paths for recovery; (2) Recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; (3) Responds by fully integrating knowledge about trauma into policies, procedures, and practices; and (4) Seeks to actively resist re-traumatization. A trauma-informed approach can be implemented in any type of service setting or organization and is distinct from trauma-specific interventions or treatments that are designed specifically to address the consequences of trauma and to facilitate healing.”

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.

There would be built in safeguards to ensure a representative is qualified and authorized by the workers. With union density being at an all-time low and continuously declining, these non-traditional groups, such as legal aid, worker centers, and other labor advocacy groups fill in the gaps. Non-profit worker centers and other community-based organizations have been key partners in the education and advocacy for non-union, disempowered vulnerable workforces with different state agencies. They have a certain level of trust and legitimacy, similar to a union, established with the workers they serve.

A broad definition of employee-designated representative would be consistent with existing definitions in both federal and California law. The federal Hazard Communication Standard (HazCom 1994), 29 CFR 1910.1200(c), defines "Designated Representative" as "any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this section," and provides that "[a] recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization." California access to medical records 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 employee exposure records and analyses using exposure or medical records, but access to an employee's medical records requires the employee's written consent."

Although, both California and Federal HazCom and California employee exposure records regulations concern access to records for an employee representative, the regulation is helpful in clearly defining who can serve as such representative.

Therefore, we recommend using the definition for representative from any of the following definitions for representative or in the Mine Safety and Health Act⁴² :

"Employee 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.

"Qualified Representative" an authorized employee representative selected by two or more employees which representative shall be an attorney, a health or safety professional, union representative, or a representative of a community organization such as a worker center or worker advocacy organization."

⁴² 30 C.F.R. § 40.

Again, in the current standard representatives do not have access to the plan. Representatives must have access to the plan because it allows for them to meaningfully advocate for workers protections related to WVP. Worker and representative access to this information is crucial, especially where workers are disempowered and do not have a union. Equally, important is representative access to the workplace violence incident log. This is a hugely important piece for representatives to know what kind of threats or other incidence of violence occur at the workplace in order to advocate for improved hazard identification, and control measures to protect workers from violence.

Because representatives play a significant role, especially where there is no union, we propose inserting “and qualified representative” to ensure that representatives have access, in the following sections: WVP plan, investigation records and the workplace violence incident log.

In closing, we appreciate all of the work going into establishing a strong and comprehensive WVP standard for general industry and the opportunity to be a part of this process. Please direct any questions regarding this comment letter to Worksafe’s Nicole Marquez at nmarquez@worksafe.org or (510) 922-9719.

Thank you for your consideration of these comments.

Sincerely,

/s/

Nicole Marquez
Senior Staff Attorney
Worksafe