

## Workplace Violence Prevention in All Industries – Draft Text

*Draft revisions 10/24/18 compared to 12/4/17*

### §3343. Workplace Violence Prevention.

(a) **Scope and Application.** This section applies to all employers except as listed below.

EXCEPTION 1: This section does not apply to health care facilities, service categories, and operations covered by California Code of Regulations, title 8, section 3342.

EXCEPTION 2: Employers may comply with title 8, section 3342 in lieu of complying with this section.

EXCEPTION 23: This section does not apply to the following facilities operated by the California Department of Developmental Services (DDS) and scheduled to close by the end of 2021: (1) Porterville Developmental Center General Treatment Area; (2) Fairview Developmental Center; and (3) Sonoma Developmental Center. These facilities shall still comply with title 8, section 3203 during the closure process.

EXCEPTION 34: This section shall not apply to facilities operated by the California Department of Corrections and Rehabilitation. These facilities shall still comply with title 8, section 3203.

EXCEPTION 45: This section shall not apply to law enforcement agencies that are a “Department or Participating Department” as defined in title 11, section 1001, and have received confirmation of compliance with the Commission on Peace Officer Standards and Training (POST) Program from the POST Executive Director in accordance with title 11, section 1010. These facilities shall still comply with title 8, section 3203.

### (b) Definitions.

“Chief” means the Chief of the Division of Occupational Safety and Health of the Department of Industrial Relations, or his or her designated representative.

“Division” means the Division of Occupational Safety and Health of the Department of Industrial Relations.

“Injury” means an injury to an employee that meets the recording criteria listed in title 8, section 14300.7(b)(1).

“Threat of violence” means a statement or conduct 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.

“Union representative” means a recognized or certified collective bargaining agent representing the employer’s employees.

“Workplace violence” means any act of violence or threat of violence that occurs ~~at the work site~~ in a place of employment. 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;
- (C) Four workplace violence types:
  - ~~1.(1)~~ 1.(1) "Type 1 violence" means workplace violence committed by a person who has no legitimate business at the worksite, and includes violent acts by anyone who enters the workplace with the intent to commit a crime.
  - ~~2.(2)~~ 2.(2) "Type 2 violence" means workplace violence directed at employees by customers, clients, patients, students, inmates, or visitors.
  - ~~3.(3)~~ 3.(3) "Type 3 violence" means workplace violence against an employee by a present or former employee, supervisor, or manager.
  - ~~4.(4)~~ 4.(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.

(c) **Workplace Violence Prevention Plan.** ~~As part of the Injury and Illness Prevention Program (IIPP) required by title 8, section 3203, t~~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 Injury and Illness Prevention Program (IIPP) required by title 8, section 3203 or maintained as a separate document, and shall include all of the following elements:

- (1) Names or job titles of the persons responsible for implementing the Plan.
- (2) Effective procedures to obtain the active involvement of employees and their union representatives in developing and implementing the Plan, including their participation in identifying, evaluating, and correcting workplace violence hazards; designing and implementing training; and reporting and investigating workplace violence incidents.
- (3) Methods the employer will use to coordinate implementation of the Plan with other employers, ~~whose employees work in same workplace, where applicable. as set forth in subsections (c)(3)(A) and (c)(3)(B). These methods shall ensure that all employees are provided the training required by subsection (e):~~

(A) Employers in a direct contracting relationship to perform work at a multi-employer worksite shall coordinate with each other.

(B) Employers in a dual-employer relationship, where one or more employees are employed by both employers at the same time to perform work at the worksite, shall coordinate with each other.

(4) Effective procedures for the employer to accept and respond to reports of workplace violence, ~~including Type 3 violence~~, and to prohibit retaliation against an employee who makes such a report.

(5) Procedures to ensure that supervisory and non-supervisory employees comply with the Plan in accordance with title 8, section 3203(a)(2).

(6) Procedures to communicate with employees regarding workplace violence matters including:

(A) How an employee can report a violent incident, threat, or other workplace violence concern without fear of reprisal;

~~(B) How employees can communicate workplace violence concerns without fear of reprisal;~~

~~(B)~~(C) How employee concerns will be investigated, and how employees will be informed of the results of the investigation and any corrective actions to be taken;

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

(A) How employees will be alerted about workplace violence emergencies;

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

(C) Procedures to obtain help from staff, if any, assigned to respond to workplace violence emergencies; security personnel, if any; or the appropriate law enforcement agency.

~~(8)~~(7) Procedures to develop and provide the training required in subsection ~~(d)~~.

~~(9)~~(8) Procedures to identify ~~and evaluate~~ workplace violence hazards, including scheduled periodic inspections to identify unsafe conditions and work practices; and procedures to evaluate workplace violence hazards identified through periodic inspections, employee concerns, workplace violence incidents, and whenever the employer is made aware of a new or previously unrecognized hazard.

~~(10)(9)~~ Procedures to correct workplace violence hazards in a timely manner in accordance with title 8, section 3203(a)(6).

~~(11)(10)~~ Procedures for post-incident injury response and investigation.

~~(12)~~ Procedures to review the effectiveness of the Plan periodically and after any workplace violence incident that results in an injury, and to revise the Plan as needed.

**(d) Violent Incident Log.** The employer shall record information in a violent incident log (Log) about every incident and post-incident response and investigation performed in accordance with subsection (c)(11). Information about each incident shall be based on information solicited from the employees who experienced the workplace violence. The employer shall omit any element of personal identifying information sufficient to allow identification of any person involved in a violent incident, 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. The Log shall be reviewed during the periodic reviews of the Plan required in subsection (c)(12). The information recorded in the Log shall include, but not necessarily be limited to:

(1) Date, time, and specific location of the incident;

(2) The workplace violence type or types, as defined in subsection (b), involved in the incident (for example, "Type 1," "Type 2," or "Type 3 and Type 4");

(3) Nature of the incident, including whether it involved:

(A) Physical attack, including biting, choking, grabbing, hair pulling, kicking, punching, slapping, pushing, pulling, scratching, or spitting;

(B) Attack with a weapon or object, including a gun, knife, or other object;

(C) Threat of physical force or threat of the use of a weapon or other object;

(D) Sexual assault or threat, including rape/attempted rape, physical display, or unwanted verbal/physical sexual contact;

(E) Animal attack;

(F) Other.

(4) Consequences of the incident, including:

(A) Whether medical treatment was provided to the employee;

(B) Who, if anyone, provided necessary assistance to conclude the incident;

(C) Whether security was contacted and whether law enforcement was contacted;

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

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

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

**(ed) Training.** The employer shall provide effective training to employees as specified in subsections (ed)(1) and (ed)(2) that addresses the workplace violence risks that employees are reasonably anticipated to encounter in their jobs. Training material appropriate in content and vocabulary to the educational level, literacy, and language of employees shall be used.

- (1) All employees shall be provided initial training as described in subsection (ed)(2) when the Plan is first established and when an employee is newly hired or newly assigned to perform duties for which the training required in this subsection was not previously provided.
- (2) Initial training shall address the workplace violence hazards specific to the employees' jobs identified at the workplace, the corrective measures the employer has implemented, an explanation of the employer's ~~workplace violence prevention p~~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.
- (3) Additional training shall be provided when a new or previously unrecognized workplace violence hazard has been identified. The additional training may be limited to addressing the new workplace violence hazard.

**(ef) Recordkeeping.**

- (1) Records of workplace violence hazard identification, evaluation, and correction shall be created and maintained for a minimum of one year in accordance with title 8, section 3203(b)(1), except that the exception to title 8, section 3203(b)(1) does not apply.
- (2) 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) Violent incident logs required by subsection (d) shall be maintained for a minimum of five years.

- (43) Records of workplace violence ~~incident-injury~~ investigations conducted pursuant to subsection (c)~~(11)(10)~~ shall be maintained for a minimum of five years. These records shall not contain “medical information” as defined by Civil Code Section 56.05(j).
- (54) All records required by ~~this~~-subsection (f) shall be made available to the Chief on request, for examination and copying.
- (65) All records required by ~~this~~-subsections (f)(1), (f)(2), and (f)(3) shall be made available to employees and their representatives, on request, for examination and copying within 15 calendar days of a request~~-in accordance with title 8, section 3204(e)(1) of these orders.~~