STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
2520 Venture Oaks Way, Suite 350
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(916) 274-5721

In the Matter of a Petition by:	)	
	)	PETITION FILE NO. 542
Meleah Hall	)	DECISION
14850 Hwy 4, Suite A 172	)	
Discovery, CA 94505	)	
	)	
	)	
Applicant.	)	

The Occupational Safety and Health Standards Board hereby adopts the attached AMENDED PROPOSED DECISION.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

DAVID THOMAS, Chairman

DAVE HARRISON, Member

WILLIAM JACKSON, Member

HANK MCDERMOTT, Member

PATTY QUINLAN, Member

BARBARA SMISKO, Member

LAURA STOCK, Member

By: Marley Hart
Marley Hart, Executive Officer

DATE: 12/18/2014
Attachments

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AMENDED PROPOSED PETITION DECISION OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (PETITION FILE NO. 542)

INTRODUCTION

The Occupational Safety and Health Standards Board (Board) received a petition on July 17, 2014, from Meleah Hall (Petitioner). The Petitioner requests the Board to amend the General Industry Safety Orders and promulgate a comprehensive workplace violence prevention standard for workers in educational settings.

Labor Code section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit an evaluation regarding the proposal.

SUMMARY

The Petitioner states that she is petitioning the Board on behalf of more than 300,000 California teachers. According to the Petitioner, a "[recent] study conducted by the American Psychological Association… [surveyed] nearly 3,000 teachers [where] 80% of [the teachers] reported some sort of workplace violence while 49% reported being physically assaulted." She believes that one reason why violence rates have not gone down in school districts is because school districts are exempt from the documentation and reporting requirements of other industries.

The Petitioner asks that the Board consider the following when creating a standard to address violence in educational settings: employee involvement in the development of workplace violence prevention standards; use of incident data reported by school districts annually; coverage of all school employees, both public and private; written standards available to all workers and communicated in staff meetings; reporting requirements similar to other industries and fore-warning of staff when a student or visitor has a history of violence; specific information addressing special education teachers and teachers in continuation and community day schools; training requirements on hazards before an employee enters a class room, including information on how to respond to an incident; and requirements for investigating incidents with special procedures for investigations where the injured employee experiences brain trauma, unconsciousness, or amnesia.

DIVISION'S EVALUATION

The Division submitted an evaluation report for Petition File No. 542 dated October 13, 2014, which recommended denying the Petitioner's request. In response to the Petitioner's concerns about record keeping and injury reporting requirements for schools on the OSHA 300 Log, the Division points out that the exemption was adopted from the corresponding federal regulation when it was enacted in California in 2001. An update to federal OSHA reporting requirements is forthcoming and the Division suggests that the Department of Industrial Relations, which oversees injury documentation and reporting requirements, can consider changes to the OSHA 300 Log requirements when it reviews the new rule.

The Division notes the absence of specific regulations regarding workplace violence, and states that it has required employers to use the provisions of Section 3203, Injury and Illness Prevention Program, to address violence in the workplace. The Division also refers employers to its 1993 "Guidelines for Workplace Security" for assistance.

Finally, the Division provides details on its progress in developing a workplace violence prevention standard for healthcare workers, pointing out that the Petitioner and a representative from the California Teachers Association are participating. The Division concludes saying that "The existing IIPP requirements in Section 3203 can already be applied in educational settings," and recommends "that the petition be denied with the understanding that the current, ongoing process may shed light on appropriate methods applicable in educational settings."

STAFF'S EVALUATION

Although the present petition is arguably not as formally written, it is substantially similar to the two recently granted workplace violence in healthcare petitions. The two former petitions and the present petition all suggest that employee participation, review of accident data, effective and specific training, and accident investigation are integral to dealing with the issue of workplace violence in their respective workplaces. The sources of violence are also similar in both the educational and healthcare fields: criminals/gangs, mentally ill and upset patients/students, and current/former employees and their acquaintances. Both workplaces also have increased incidence rates for workplace violence when compared to national statistics.

According a U.S Department of Justice, Bureau of Justice Statistics, Special Report published in March 2011[1], discussing workplace violence for the years 1993-2009, law enforcement experienced the highest proportion of all workplace violence at 19%, followed by persons in retail sales (13%), persons in medical occupations (10%), and teaching (9%). The occupations with the highest workplace violence rates (per 1,000 employees) were bartenders (79.9), law enforcement officers (77.8), security guards (65.0), technical/industrial school teachers (54.9), and custodial care employees in a mental health facility (37.6).

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[1] A copy of the full report can be found here: http://www.bjs.gov/content/pub/pdf/wv09.pdf

In the Board staff evaluation of Petitions 538 and 539, Board staff states:

> "Care should be exercised in dealing with workplace violence in one setting to avoid giving the impression that violence in other settings need not be addressed to the same degree. Furthermore, developing regulations specific to each affected industry, or subclass within an industry, could lead to numerous new vertical workplace violence standards being developed for a long list of occupations."

Board staff reaffirms this position and asserts that workplace violence in any setting should be prevented to the extent possible; however, the creation of numerous vertical standards to address violence in multiple workplace settings is problematic. In a situation where two workplace violence prevention standards were developed separately, there would be increased risk of redundant and conflicting regulatory language.

Assuming that the Division is successful in developing a workplace violence prevention standard for healthcare and that a second standard specific to educational settings is developed separately, which standard would apply to a school nurse, and would it matter if that nurse was working at a university, instead of an elementary school? Because of the difficulty in defining the scope of any workplace violence regulation, one standard should be developed to address all workplaces in California.

Based on the foregoing discussion, Board staff recommends that the Petition be granted to the extent that the Board requests the Division to expand the scope of the recently begun advisory committee meeting process addressing workplace violence in healthcare settings to discuss workplace violence in all California workplaces. Should necessity be established for a new standard, the Division is requested to prepare rulemaking documents for consideration by the public and the Board. Additionally, the Board should request that the Division reconvene its advisory committee(s) to discuss any necessary revisions to the Cal/OSHA "Guidelines for Workplace Security," "Guidelines for Security & Safety of Health Care and Community Service Workers" and "Model Injury & Illness Prevention Program for Workplace Security" sample programs, which were last revised in the 1990s, and ensure that they contain up-to-date best practices for assisting employers in developing workplace violence prevention programs.

CONCLUSION AND ORDER

Petition 542 is granted to the extent that it will be sent to an advisory committee to address workplace violence prevention in all California workplaces, specifically inclusive of educational workplaces. The Board requests the Division of Occupational Safety and Health to provide a written report by June 1, 2015, that states the benefits of what they have learned (from the healthcare advisory committee proceedings) relative to potential regulatory language that might be generally applicable to workplace violence prevention in all workplaces. Standards Board staff is directed to review the Division's report and at the June 18, 2015 Board meeting, provide the Board with guidance about the best way to initiate the advisory committee process, including in what manner and by whom.