

Memorandum

To : All Standards Board Members

Date : June 9, 2015

From : Occupational Safety and Health Standards Board
Marley Hart, Executive Officer

Subject : Evaluation of Division Report and Board Recommendation in Response to Board Decision on Petition 542

At the December 2014 Board meeting, the Board made a motion to grant Petition 542 (Meleah Hall) regarding the development of a workplace violence prevention (WVP) standard for all California workplaces, specifically inclusive of educational workplaces. Because the Division of Occupational Safety and Health (Division) was already involved in a rulemaking effort covering workplace violence in healthcare settings, the Board requested that the Division provide a written report to the Board by June 1, 2015, detailing the benefits of what the Division has learned from the healthcare advisory committee proceedings that could be generally applicable to a WVP standard for all California workplaces.

Although the Division has not finalized a proposal addressing workplace violence in healthcare settings, Juliann Sum, Chief of the Division, sent a report dated May 29, 2015, to the Board discussing what the Division has found that could be beneficial to the development of a general WVP standard.

In its report, the Division states that from September 2014 through April 2015, it has held five advisory committee meetings as part of the effort to develop a standard, including one meeting specifically held to discuss the role of law enforcement in protecting healthcare workers. The following are the elements of a WVP standard, which were identified by the Division as being broadly applicable to employers in other industries:

1. Assessment procedures for identifying and evaluating workplace violence risk factors. This should include risk factors at fixed work locations as well as risk factors at offsite or temporary work locations.
2. Procedures for correcting hazards related to workplace violence in a timely manner, in accordance with Title 8, Section 3203(a)(6), and use of engineering and work practice controls to eliminate or minimize employee exposure to the identified hazards to the extent feasible.
3. An effective written workplace violence prevention plan (Plan) specific to the hazards and corrective measures for each facility, service, or operation. The Plan could be

incorporated into the employer’s injury and illness prevention program (IIPP) or kept as a separate document as appropriate for that employer.

4. Effective procedures for the active involvement of employees and their representatives in the development, implementation, and review of the Plan, including participation in the identification, evaluation, and correction of workplace violence hazards, design and implementation of training, and the reporting and investigation of workplace violence incidents.
5. Procedures for communicating workplace violence matters with employees and with law enforcement as appropriate.
6. Procedures for developing and providing training, including ensuring that new employees, temporary employees, contract employees, and employees of visiting employers are informed of the Plan and the necessary elements of the Plan.
7. Procedures for post-incident response and workplace violence injury investigation.
8. Logs of violent incidents, to be used to evaluate and update the Plan.

Discussion

Because the Division was unable to produce a proposed standard by the Board’s June 1, 2015, deadline for a written report, the reported benefits taken from the various advisory committee meetings are general and nonspecific, including many suggestions already required by Section 3203 (IIPP), as outlined below:

Division’s Report	IIPP Requirement
1. Assessment procedures for identifying and evaluating workplace violence risk factors. This should include risk factors at fixed work locations as well as risk factors at offsite or temporary work locations.	3203(a)(4) – Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices.
2. Procedures for correcting hazards related to workplace violence in a timely manner, in accordance with Title 8, Section 3203(a)(6), and use of engineering and work practice controls	3203(a)(6) – Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:...

<p>to eliminate or minimize employee exposure to the identified hazards to the extent feasible.</p>	
<p>3. An effective written workplace violence prevention plan (Plan) specific to the hazards and corrective measures for each facility, service, or operation. The Plan could be incorporated into the employer’s injury and illness prevention program (IIPP) or kept as a separate document as appropriate for that employer.</p>	<p>3203(a) – Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program)...</p>
<p>4. Effective procedures for the active involvement of employees and their representatives in the development, implementation, and review of the Plan, including participation in the identification, evaluation, and correction of workplace violence hazards, design and implementation of training, and the reporting and investigation of workplace violence incidents.</p>	<p>[Suggestion #4 requires employee and labor participation in a safety and health committee, whereas the IIPP gives the employer the option to form a committee. Suggestion #4 also requires other employee/labor involvement that is not explicitly stated in the IIPP.]</p> <p>3203(c) – Employers who elect to use a labor/management safety and health committee to comply with the communication requirements of subsection (a)(3) of this section shall be presumed to be in substantial compliance with subsection (a)(3) if the committee:</p> <p>(1) Meets regularly, but not less than quarterly;</p> <p>(2) Prepares and makes available to the affected employees, written records of the safety and health issues discussed at the committee meetings and, maintained for review by the Division upon request. The committee meeting records shall be</p>

	<p>maintained for at least one (1) year;</p> <p>(3) Reviews results of the periodic, scheduled worksite inspections;</p> <p>(4) Reviews investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submits suggestions to management for the prevention of future incidents;</p> <p>(5) Reviews investigations of alleged hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspection and investigation to assist in remedial solutions;</p> <p>(6) Submits recommendations to assist in the evaluation of employee safety suggestions; and</p> <p>(7) Upon request from the Division, verifies abatement action taken by the employer to abate citations issued by the Division.</p>
<p>5. Procedures for communicating workplace violence matters with employees and with law enforcement as appropriate.</p>	<p>3203(a)(3) – Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.</p>
<p>6. Procedures for developing and providing training, including ensuring</p>	<p>[Suggestion #6 is substantially similar to the current IIPP requirements, except for the</p>

<p>that new employees, temporary employees, contract employees, and employees of visiting employers are informed of the Plan and the necessary elements of the Plan.</p>	<p>Division identified benefit to train employees of visiting employers.]</p> <p>3207(a)(7) – Provide training and instruction:</p> <p>(A) When the program is first established;</p> <p>Exception: Employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with the previously existing Accident Prevention Program in Section 3203.</p> <p>(B) To all new employees;</p> <p>(C) To all employees given new job assignments for which training has not previously been received;</p> <p>(D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;</p> <p>(E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,</p> <p>(F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.</p>
<p>7. Procedures for post-incident response and workplace violence injury investigation.</p>	<p>3203(a)(5) – Include a procedure to investigate occupational injury or occupational illness. [See also 3203(a)(6) above.]</p>
<p>8. Logs of violent incidents, to be used to evaluate and update the Plan.</p>	<p>[Suggestion #8 is not required by the IIPP regulation.]</p>

Based upon the analysis in the above table, the elements of a WVP standard that can be generally applied to all California workplaces, and which are not already included in the requirements of an IIPP, are 1) mandated employee and labor participation in implementing and combatting workplace violence, 2) a requirement to train employees of other employers on the site's WVP program, and 3) maintaining a log of all incidents of workplace violence.

The information provided in this memorandum does not speak to the merits of each new requirement suggested by the Division, as these are elements that will require advisory committee input and consideration.

Board staff sees three options for moving forward with the development of a WVP proposal for all California workplaces.

Option 1: Board staff moves forward with the development of a General Industry WVP proposal using the information that the Division has provided to date.

PRO: The benefits of Option 1 are that the WVP standard for general industry can get underway without further delay and that the work can be directed by the Board and remain under its control.

CON: The downside of Option 1 is that the resulting proposal is likely to have conflicts with the proposal that is eventually put forth by the Division because it was developed independent of the Division's proposal. Conflicts could include unharmonized regulatory scopes and control requirements. Additionally, the Board staff would need to convene advisory committees to gather information, which would be redundant of the Division's efforts.

Option 2: The Board requests the Division to develop a workplace violence prevention standard for General Industry after the completion of its current rulemaking effort regarding WVP in healthcare settings.

PRO: The benefits of Option 2 are that the Division already has the testimonial records, contacts, resources, and fiscal impacts, in addition to experience enforcing WVP provisions in the state. Additionally, because the Division is the most familiar with the intent of its WVP in healthcare standard, it would be most able to avoid conflicts and redundancies with the general standard.

CON: The downside of Option 2 is that the Division has several ongoing projects and work on this rulemaking is not subject to the control of the Board.

Option 3: The Board staff waits for the Division WVP in healthcare standard to be adopted and then begins the process of developing the general standard.

PRO: The benefit of Option 3 is that the Board can view the final language of the WVP in healthcare standard and more confidently develop the general language and scope using universally applicable elements of the healthcare standard.

CON: The downside of Option 3 is that the Board staff would either have to repeat a lot of the data and information gathering that has been performed by the Division already, including the convening of additional advisory committee meetings, or work through the Division to reconnect with its sources of information and advisory members to develop the new standard. This option would delay the start of the rulemaking effort the furthest of any of the options.

Conclusion

Based upon the report supplied by the Division, and for the reasons stated above, Board staff recommends that the Board adopt Option 2, requesting the Division to develop a WVP proposal for general industry after the completion of its current WVP rulemaking effort. Option 2 is the most efficient use of state resources because it minimizes potential conflicts between the forthcoming WVP in healthcare and the WVP regulation for general industry. Furthermore, Option 2 is the most expeditious of the options and will produce a regulation protecting all California workplaces from WVP in the shortest amount of time because so much of the knowledge and experience in the matter is already held by the Division. Most importantly, by authoring both regulations, the Division will have the leeway to adjust the scope of the two regulations to harmonize better in situations where there are misunderstandings of which regulation applies to a specific situation.