

Memorandum

To: Marley Hart, Executive Officer
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Date: October 13, 2014

From: Juliann Sum, Acting Chief
Division of Occupational Safety and Health

Subject: Division Evaluation of Petition 542 from Meleah Hall.

This memorandum is written in response to your request for Division review of Petition 542 submitted by Meleah Hall and marked received by OSHSB on 7/17/14, requesting the Board to create workplace safety standards to reduce injuries in educational settings.

Labor Code section 142.2 permits interested persons to propose new or revised standards 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 must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

The Division has prepared this memorandum as an evaluation of the petition.

Actions Requested by the Petitioner

The petitioner states that although we frequently hear about violence in the school setting, the educator and school staff are often left out of the conversation. She references an American Psychological Association survey of nearly 3,000 teachers showing that workplace violence incidents and staff assaults are common occurrences. She expresses concern that school districts are exempt from most documentation requirements that other agencies must follow in regards to workplace illness and injuries, which she believes may be one of the reasons that the conditions have not improved.

The petitioner requests that the Board consider the following:

1. School teachers, paraprofessionals and other educational staff should be actively involved in the rulemaking process.
2. Any standard developed in response to this petition should apply to public, private, and non-public schools.
3. The injury and illness prevention program (IIPP) regulation in the California Code of Regulations, title 8, section 3203, should be applied as follows:
 - o A written IIPP must be made available to all workers and communicated to staff.
 - o Under section 3203(a)(5), investigation of incidents resulting in brain injury should follow strict protocols for conducting the investigations including interviewing all participants and calling in law enforcement and/or school security officers where

appropriate. In cases involving other types of bodily harm, law enforcement should be called to support the investigation.

- Training under section 3203(a)(7) should be augmented to address special education classroom settings, urban settings where there is an increased risk of gun violence, and incident investigation following an injury.
4. Schools should be required to maintain records and report occupational injuries and illnesses. *(Note: Schools are currently exempt from recordkeeping requirements, as discussed below, but are still required to report injuries and illness under the California Code of Regulations, title 8, sections 342 and 14001).*

Regulations, Laws, and Other Standards

California Code of Regulations, title 8:

- Section 3203, Injury and Illness Prevention Program, requires employers to identify and evaluate workplace hazards, investigate occupational injuries and illnesses, implement corrective measures in a timely manner, provide employee and supervisor training, develop a system for ensuring compliance with workplace health and safety measures, and establish a system of communication with employees regarding safety and health matters.
- Sections 14300-14400, Employer Records of Occupational Injury or Illness, require employers to record and post summaries of workplace injuries and illnesses. *Under 14300.2, schools are partially exempt from these requirements unless requested in writing to follow the requirements.*

Federal OSHA Regulations and Other Standards

No Occupational Safety and Health Administration (OSHA) regulation expressly applies to workplace violence.

The Code of Federal Regulations, title 29, section 1904, Recording and Reporting Occupational Injuries and Illnesses, requires employers to record and report workplace injuries and illnesses. Revisions to this regulation were issued on September 18, 2014, to take effect on January 1, 2015.

Other guidelines and relevant documents

Workplace Violence, OSHA Safety and Health Topics: <https://www.osha.gov/SLTC/workplaceviolence/>

OSHA Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents CPL 02-01-052 09/08/2011

OSHA publications and procedures regarding recordkeeping including the new updates to take effect in 2015: <https://www.osha.gov/recordkeeping2014/>

Discussion

All of the issues raised in item 3 above can be addressed by proper implementation of existing section 3203 IIPP requirements and do not require any revisions to section 3203. Division staff have discussed with the petitioner and labor representatives how existing standards such as section 3203 can be used to address the specific and unique hazards in the petitioner's workplace. The Division is willing to work with the petitioner, education employers, and labor representatives to determine if specific guidelines are needed and how best they may be developed.

In the recordkeeping regulations, section 14300.2 exempts school and educational institutions from maintaining a "log 300". This exemption was adopted from the corresponding federal regulation, (29 CFR 1904.2 Appendix A – "Partially Exempt Industries") in 2001. Sections 14300-14400 are regulations of the Department of Industrial Relations and not administered by the Standards Board. Therefore, this aspect of the petition should be referred to the Department for consideration. As specified by the federal regulations, a state may remove an industry from the exemption list if warranted, or can request in writing that the records be maintained on a year-to-year basis. The Department could consider such a change when it reviews its Title 8 section 14300-14400 regulations to determine what updates need to be made in response to the new federal final rule changes issued in September.

Division Experience

In 1993, the Division published one of the first guidelines in the nation to address workplace violence, "Guidelines for Workplace Security." This publication, updated in 1995, is still available on the DOSH website. The Division maintained a workplace violence task force throughout the 1990s.

Without a specific regulation, the Division has required employers to develop and implement procedures to prevent or minimize the severity of workplace violence incidents under section 3203, which provides some limited guidance for how employers can address the specific hazards of workplace violence. Section 3203, however, does not specifically require the use of employee alarm systems or emergency action plans for response to workplace violence incidents.

On September 10, 2014 the Division held a pre-rulemaking advisory meeting to address workplace violence prevention in the health care industry in response to two Petitions (numbers 538 and 539) granted by the Standards Board in July 2014. The petitioner and a representative of the California Teachers Association attended the meeting and provided advice applicable to health care activities in schools.

Conclusion

The existing IIPP requirements in section 3203 can already be applied in educational settings. The current recordkeeping and posting requirements in sections 14300-14400 will soon be revised to conform to the revised federal OSHA regulation in 29 CFR 1904. The Department of Industrial Relations will be evaluating and preparing a response to the federal changes within the next six months and at that time can consider the petitioner's concerns.

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Regarding a new workplace violence standard specific to education, the petition neither provides specific recommendations nor references an approach to the problem used by other agencies such as OSHA or NIOSH. In the meantime, the Division is currently engaged in a pre-rulemaking advisory process to develop a regulation on workplace violence in health care settings. The Division recommends that the petition be denied with the understanding that the current, ongoing process may shed light on appropriate methods applicable in educational settings.

cc: Kevin Graulich
Steve Smith