

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

BOARD STAFF'S REVIEW OF THE PETITION

**Petition File No. 542
Meleah Hall**



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Date: November 17, 2014**

Introduction

On July 17, 2014, the Occupational Safety and Health Standards Board (Board) received a petition from Meleah Hall (Petitioner). The Petitioner requested that the Board 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 to render its decision no later than six months following their receipt. In accordance with Board policy, the purpose of this evaluation is to provide the Board with relevant information upon which to base a reasonable decision.

History

Although no petitions specific to workplace violence in educational settings have been received by the Board in the past, petitions requesting standards in other occupational settings have been received.

On March 3, 1993, Petition 331 (Pat Wentworth and Debby Boucher, Emergency Nurses Association) was received asking the Board to develop a standard to control violence in hospitals, emergency departments and other healthcare settings. Both Board staff and the Division of Occupational Safety and Health (Division) recommended denying the petition for a variety of reasons, including jurisdictional uncertainties of the Board and DOSH, philosophical challenges of requiring employers to address hazards traditionally handled by law enforcement, duplication of requirements already requiring employers to address workplace hazards through the injury and illness prevention program (IIPP), and the infeasibility of legislating absolute safety. Although the Division did not feel it was necessary to develop a workplace violence standard at the time, it did eventually develop a 1993 guidance document for addressing workplace violence (“Guidelines for Security and Safety of Health Care and Community Service Workers”), which is currently accessible on the Division’s website. The Board denied the petition on July 22, 1993.

Petition 361 (Susan L. Chaussee) was received February 23, 1995 and requested the Board adopt regulations for employee crime protection and prevention. The petitioner stated that no regulations exist in California for protection against workplace violence and that the number of deaths occurring each year in retail and other stores needed to be addressed. She recommended patterning the regulation after the Washington State statute known as “Late Night Retail Workers Crime Protection.” Board staff and the Division again recommended that the petition be denied, using arguments similar to those used for Petition 331. Board staff recommended that the petitioner participate in the Division’s Workplace Security Advisory Committee, which was working on updates to “Cal/OSHA Guidelines for Workplace Security,” last revised in August, 1995. Petition 361 was denied in a decision dated June 22, 1995.

Petitions 538 (Richard Negri and Kathryn Hughes, SEIU Local 121RN and Nurse Alliance of California) and 539 (Bonnie Castillo, California Nurses Association) were received on February 11, and February 20, 2014, respectively. Because they were submitted at nearly the same time and with substantially similar subject matter, the Board acted on them together. Both petitions requested the promulgation of a workplace violence prevention standard, centered on healthcare workers. Both the Division and Board staff recommended granting the petitions to the extent that an advisory committee be convened to discuss the development of such a standard. The Board granted the petitions on June 19, 2014, requesting that the Division develop a consensus rulemaking proposal addressing workplace violence protection standards for consideration by the public and the Board. The Division held its first advisory committee meeting in September 2014.

Reason for the Petition

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.

National Consensus Standard

There are no national consensus standards regarding workplace violence in educational or other settings, but there are numerous sample programs, guidance documents, and other resources available online to those seeking information on controlling or preventing violence in the workplace.

New York and Washington States have each adopted workplace violence prevention standards. New York’s regulation applies to public employees and Washington’s regulation applies to businesses operating between 11 pm and 6 am, except restaurants, hotels, taverns, and lodging facilities. Washington State has also passed legislation

which will direct employers to develop and implement plans to address workplace violence in health care settings, including State psychiatric hospitals.

In addition to California, New York, and Washington, other states with online workplace violence prevention assistance include Indiana, Iowa, Michigan, Minnesota, Oregon, Virginia, and Wyoming. Numerous other public and private organizations have workplace violence prevention information, ranging from sample programs to guidance documents for use in addressing workplace violence issues as well. Most such information is general and performance based to be applicable to a variety of industries.

Federal OSHA Standards

Federal OSHA currently regulates workplace violence using the General Duty clause. In the OSHA document entitled “Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents,” page 3 states in part:

“Employers may be found in violation of the general duty clause if they fail to reduce or eliminate serious recognized hazards. Under this directive, inspectors should therefore gather evidence to demonstrate whether an employer recognized, either individually or through its industry, the existence of a potential workplace violence hazard affecting his or her employees. Furthermore, investigations should focus on the availability to employers of feasible means of preventing or minimizing such hazards¹.”

Federal OSHA does not have additional regulation specific to workplace violence prevention.

Division of Occupational Safety and Health (Division) Report

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

¹ Occupational Safety and Health Administration, U.S. Department of Labor, “Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents,” Directive Number CPL 02-01-052, effective September 8, 2011, https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-01-052.pdf, accessed April 7, 2014.

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 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.

The following table is taken from a U.S Department of Justice, Bureau of Justice Statistics, Special Report published in March 2011², discussing workplace violence for the years 1993-2009. According to the report, 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).

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 imprudent. In a situation where two workplace violence prevention standards were developed separately, there would undoubtedly be overlap and conflict and redundancy of regulatory language.

² A copy of the full report can be found here: <http://www.bjs.gov/content/pub/pdf/wv09.pdf>

TABLE 3
Workplace and nonworkplace violence, by occupation, 2005–2009

Occupation	Rate of workplace violence per 1,000 employed persons age 16 or older	Nonworkplace violence rate per 1,000 employed persons age 16 or older	Percentage of workplace violence	Percentage of employed population age 16 or older
Total	5.1	16.4	100.0%	100.0%
Medical	6.5	15.0	10.2%	8.2%
Physician	10.1	7.7*	1.1	0.6
Nurse	8.1	13.8	3.9	2.5
Technician	11.1	12.2	2.3	1.1
Other/medical occupations	3.7	17.5	2.9	4.1
Mental health	20.5	17.2	3.9%	1.0%
Professional	17.0	12.8	1.4	0.4
Custodial care	37.6*	4.4*	0.7*	0.1
Other mental health occupations	20.3	24.1	1.8	0.5
Teaching	6.5	8.8	9.0%	7.2%
Preschool	0.9*	9.8	0.1*	0.5
Elementary	4.3	4.7	1.5	1.9
Jr. high/middle	8.6	5.0*	1.3	0.8
High school	13.5	7.4	2.6	1.0
College/university	1.9*	14.1	0.7*	1.9
Technical/industrial school	54.9*	—*	0.7*	0.1
Special education facility	17.8*	8.0*	0.5*	0.2
Other teaching occupations	8.9	11.4	1.6	0.9
Law enforcement	47.7	13.7	18.9%	2.1%
Law enforcement officer	77.8	3.5*	9.1	0.6
Corrections officer	33.0	13.0*	1.8	0.3
Security guard	65.0	23.1	5.6	0.5
Other law enforcement occupations	17.5	16.7	2.4	0.7
Retail sales	7.7	24.3	13.2%	9.0%
Convenience or liquor store clerk	7.1*	25.1	0.7*	0.5
Gas station attendant	30.2*	25.8*	0.8*	0.1
Bartender	79.9	38.7*	1.9	0.1
Other retail sales occupations	6.3	24.0	9.8	8.2
Transportation	12.2	12.9	7.4%	3.2%
Bus driver	10.0*	3.1*	0.6*	0.3
Taxi cab driver	9.0*	33.3*	0.2*	0.1
Other transportation occupations	12.6	13.4	6.6	2.7
Other/unspecified	2.8	16.6	37.3%	69.3%

Note: The National Crime Victimization Survey and Census of Fatal Occupational Injuries use different categories of occupations. Includes 2006 data. See *Methodology*.

*Based on 10 or fewer sample cases.

—Less than 0.05.

Source: National Crime Victimization Survey.

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.

Recommendation

Based on the foregoing discussion, Board staff recommends that the Petition be granted to the extent that the Board request 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.