

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 547)****INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on April 13, 2015, from Robert Jungers (Petitioner). The Petitioner requests the Board to amend Title 8, California Code of Regulations, General Industry Safety Orders to include a workplace bullying prevention standard similar to the Healthy Workplace Bill (HWB) in Massachusetts.

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 “the workplace bullying and mobbing issue is very old” and that “[He has] seen it all [his] life.” He estimates that regulations addressing workplace bullying have existed in other countries for about 20 years. While browsing social media, he says that he discovered some information discussing the State of Massachusetts’ Healthy Workplace Bill and “immediately saw the need for something like this in California.”

STAFF’S EVALUATION

A 2012 report prepared for the National Education Association (NEA) entitled “Prevention and Intervention of Workplace Bullying in Schools” states that

“the word ‘bullying’ is commonly used in the research to describe incidents at work in which workers are ridiculed or humiliated, prevented from access to information necessary for their jobs, physically threatened, pressured or coerced to miss entitlements like vacation time, being ignored, being treated in an angry or hostile manner, or receiving insinuations that one should quit.¹”

¹ The NEA report was prepared by Catherine P. Bradshaw, Ph.D., M.Ed. and Kate Figiel, Ed.M., of Johns Hopkins University and can be found here: <https://www.nea.org/assets/docs/Workplace-Bullying-Report.pdf>

Workplace bullying is closely related to workplace harassment, but the latter is more clearly defined and prohibited by specific regulations. Additionally, the two concepts differ in that harassment is harm that occurs to an individual for belonging to “a protected class, such as race/ethnicity or sex, whereas bullying may have nothing to do with a person’s group membership (NEA, Page 5).” Victims of discriminatory harassment can sue the perpetrator of the harassment under various federal civil rights laws, but victims of bullying have no such recourse.

According to the Workplace Bullying Institute (<http://www.workplacebullying.org/>), victims of bullying can experience a wide range of physical and mental health harm, including stress and stress-related diseases, debilitating anxiety, panic attacks, and depression. Extreme cases of prolonged bullying can result in suicide.

The HWB (<http://www.healthyworkplacebill.org/>) mentioned by the Petitioner is an anti-bullying initiative that has been introduced in 29 State legislatures so far. The bill was first introduced in California in 2003, but was never scheduled for hearing. In Massachusetts, the bill has been introduced for action five times since 2005, but has never been voted on. The bill was introduced again in Massachusetts on March 11, 2015.

The HWB aims to make workplace bullying litigable through private right of action, meaning that a victim can directly sue the perpetrator without waiting for a third-party to determine whether or not an incident occurred. According to the website, the HWB will provide an avenue to workers “for legal redress for health harming cruelty at work,” allow a victim “to sue the bully as an individual,” and hold the employer accountable for preventing workplace bullying. By design, the HWB will not be enforced by state agencies, incur costs to adopting states, or require plaintiffs to be members of protected status groups².

As stated by the HWB organizers, the bill is not designed to be enforced by state agencies, such as the Division. Several other issues with the enforcement of a workplace bullying standard also make the creation of a workplace bullying standard in Title 8 incompatible with the role of the Division. Enforcement staff of the Division are trained in safety engineering and/or industrial hygiene. Workplace bullying lends itself to psychological and social issues for which Division personnel lack expertise and training. The Division is not the ideal agency for enforcement of such a standard.

California’s Department of Fair Employment and Housing (DFEH) enforces regulations prohibiting discrimination and harassment throughout the state. If a state agency were to enforce a workplace bullying standard, the DFEH would be a better candidate than the Division because the topic is more closely related to workplace discrimination and harassment than workplace safety and health.

California has recently enacted legislation addressing workplace bullying, potentially making the proposed regulation unnecessary. On September 9, 2014, AB 2053 (Gonzalez) was approved by

² <http://www.healthyworkplacebill.org/bill.php>. Accessed on 5/15/2015.

Governor Brown, effective January 1, 2015. The purpose of the bill was to add training on the prevention of “abusive conduct” to the currently required biannual training on sexual harassment for supervisors of California businesses with 50 or more employees. Although AB 2053 only requires supervisors to be trained on workplace bullying, and falls well short of the provisions of the HWB, it is a significant step toward combatting the issue.

Workplace bullying is a recognized societal/sociological issue throughout California workplaces, but its detection, management, and prevention are outside the expertise and traditional scope of the Division’s enforcement. The issue of workplace bullying would be better addressed through legislative means, as in AB 2053, and enforced through a state agency with expertise in the field of similar topics. Based on the foregoing discussion, Board staff recommends that the Petition be denied.

DIVISION’S EVALUATION

The Division submitted an evaluation report for Petition File No. 547 dated June 23, 2015, which recommends denying the Petitioner’s request. The Division evaluation discusses several existing regulations found in Civil, Government, and Labor Code, which act to prevent or discourage behaviors related to workplace bullying. The Division points out that “Under those statutes, hearing officers, administrative law judges, and court judges are authorized to oversee the discovery of evidence and conduct hearings to consider the evidence and the credibility of the parties.” Hearings are a fundamental part of procedural due process in US law. The hearing officers and judges identify violations and issue decisions based on the parties’ arguments and the evidence presented. Because the facts of every case are different and not subject to specific, bright-line rules, the opinions, judgments, and decisions issued by the hearing officers and judges are legally reasoned, based on comparisons to prior opinions and decisions.

Similarly, the Massachusetts “Healthy Workplace Bill,” referenced by the Petitioner as a model for California, contemplates enforcement solely through private lawsuits filed in civil court. If that bill passes as currently written, workplace bullying problems would be remedied through court decisions, and plaintiffs may be awarded damages or other remedies as appropriate. The Division is not authorized to conduct hearings to determine whether an employer should be cited for violating a safety or health regulation. The Division is authorized to enforce “effective standards” adopted by the Board (Labor Code sections 142.3 and 6300). Division compliance inspectors identify violations and issue citations by applying those standards technically and objectively (Labor Code section 6317). The Division is required to substantiate each element of a violation with supporting, objective evidence. A record of every citation that the Division issues to an employer is posted online at the federal OSHA website, regardless of whether the citation is later dismissed or upheld on appeal. Unlike the other agencies and courts discussed above, the Division is not authorized by any statute to hold hearings to consider the unique facts and arguments of the parties involved in a dispute in order to determine whether an employer should be cited for an alleged violation of a safety or health standard. (Although the Occupational Safety and Health Appeals Board holds hearings to consider employers’ appeals of citations, the Division is not authorized to do so at the initial stage of issuing a citation.)

As a result, the enforcement of a workplace bullying standard by the Division would require hearing testimony, gathering evidence, and making judgments based on that evidence, which are not authorized practices of the Division. Although the Division recognizes that workplace bullying can lead to stress and health problems for employees, the behaviors of workplace bullying do not lend themselves to objective standards, which are enforceable by the Division. Therefore, the Division recommends that the petition be denied.

CONCLUSION AND ORDER

The Board has considered the Petition and the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the petition is hereby DENIED.