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jr/tng39521/cwa/afl-cio

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Mr. Kevin Graulich
Senior Safety Engineer, Research and Standards Occupational Health Unit
Division of Occupational Safety and Health
California Department of Industrial Relations
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RE: **Workplace Violence Prevention in General Industry Proposal, Version released May 17, 2022**

Dear Mr. Graulich:

The California Labor Federation writes to comment on the Workplace Violence Prevention in General Industry Proposal, as released May 17, 2022. While this draft would finally establish a general industry regulation specific to workplace violence, the proposal remains far from what is needed to adequately protect workers from this epidemic of on-the-job attacks and threats. We urge the Division to prepare a new version that much more closely reflects the existing health care workplace violence prevention standard, Title 8 § 3342.

The severity of workplace violence, as a workplace hazard, cannot be overstated. From grocery workers shot and killed on the job with no meaningful preventive efforts in place, to bus drivers who must wonder if every new passenger is the one who will today assault and possibly kill them, to airline employees facing unconscionable harm simply for asking passengers to wear a face covering, to similar concerns in virtually every industry in every corner of the state, this hazard can no longer be ignored. It can also no longer be treated as just another issue: it is extremely deadly, it takes a lasting—if not permanent—mental toll, and it gets worse every day.

We very much support the Division's efforts to address this issue via specific regulatory language. The violence has progressed largely because so far, we have abandoned workers to the IIPP process in false hope that employers will prevent violence by recognizing it as a known hazard. Clearly, this strategy has failed.

Employers are too busy doing too many other things to become experts in this topic and then individually and unilaterally, regardless of sophistication, know exactly what to do. Making real progress towards solving this problem will demand a specific standard that identifies how best to address the problem and carries meaningful penalties when employers ignore it.

To that end, the standard as currently drafted does include very important provisions. Namely, the requirement to involve workers in drafting an effective prevention plan will take great strides towards both arranging a prevention strategy that accounts for the specific risks of a workplace and building this strategy around those who know the risk best: the workers facing it every day. That the definition of "violence" also includes threats of violence is appreciated and important. Also, the draft incorporates the concepts of effective training, a violent incident log, and adequate recordkeeping. These concepts should remain, be strengthened, and work with additional provisions to create the best possible standard.

However, the list of serious weaknesses with and omissions from this draft is long. First and most importantly, the standard includes no explicit requirement for employers to actually implement controls to prevent workplace violence. No administrative, engineering, work practice, or personal protective equipment (PPE) controls are mentioned; in fact, the terms do not even appear. This deficiency appears to be fairly unique when compared to other standards, but the hazard is at least as bad as those targeted by other sections of Title 8, calling into serious question the lack of such language in this proposal.

The health care standard, meanwhile, does in fact require these controls, with very clear language:

> *"Engineering and work practice controls shall be used to eliminate or minimize employee exposure to the identified hazards to the extent feasible. The employer shall take measures to protect employees from imminent hazards immediately, and shall take measures to protect employees from identified serious hazards within seven days of the discovery of the hazard, where there is a realistic possibility that death or serious physical harm could result from the hazard. When an identified corrective measure cannot be implemented within this timeframe, the employer shall take interim measures to abate the imminent or serious nature of the hazard while completing the permanent control measures. Corrective measures shall include, as applicable, but shall not be limited to…"*

We can think of no reason to not add this language—as well as corrective measures listed following the above excerpt—to the general industry standard. Rather, anyone would intuitively argue that other workers facing violence similar to that in health care deserve at least the same protection. Further, the "to the extent feasible" language allows for small employers with few resources to assert an inability to do more and, if this declaration is valid, escape citations for not implementing engineering and work practice controls.

The second most prominent weakness with the draft relates to ambiguities, exceptions, and missing language in the violent incident log section. The health care standard, Title 8 § 3342, explicitly details what must be listed in the incident description, through such language as:

- "*the date, time, specific location, and department of the incident*"
- "*a classification of circumstances at the time of the incident, including whether the employee was completing usual job duties, working in poorly lit areas, rushed, working during a low staffing level, in a high crime area, isolated or alone, unable to get help or assistance, working in a community setting, working in an unfamiliar or new location, or other circumstances*"
- "*a classification of where the incident occurred, including whether it was in a patient or client room, emergency room or urgent care, hallway, waiting room, restroom or bathroom, parking lot or other area outside the building, personal residence, break room, cafeteria, or other area*"

The general industry draft, rather, deletes most of this language and allows employers clear latitude to omit the exact details that would be necessary for the log to achieve its intended purpose. If the idea is to collect such specifics and use them to inform the prevention plan, by definition the final plan will wind up much less effective than it would be were these details involved. These deletions will thus create a sort of "worst of both worlds" outcome under which employers would maintain a log, but the log would not offer what is needed for an effective prevention plan. The work asked of the employer would be very similar, but the outcome for workers would be much worse. We strongly urge the return of this language to the violent incident log section so that it more closely—or exactly—resembles that in 3342.

Also, regarding the violent incident log, the stated exception to any employer without a violent incident within the previous five years should be deleted. There is no work involved in recording incidents that did not occur, thus, the exception does not save employers any time or money but does further separate employers from the need to remain ever vigilant against this hazard.

Returning to the health care standard, that regulation includes two definitions that do not appear in this one but should: "emergency" and "environmental risk factors". The former appears in the draft and the latter should; both would work best if defined as in the health care standard. The latter, especially, is a key concept that—along with the other more specific language that should be added to the incident log—would go far towards identifying the underlying causes of violence and thus better preventing such events in the future.

3342 also requires annual review of the incident log and the prevention plan; the draft does not. Instead, the draft requires review that is "periodic"—a descriptor that, in practice, would mean nothing. Without explicitly mandated "annual" review, non-health care employers will face no real pressure to analyze these documents with an eye towards using what has been learned over the last year to better protect workers over the next one. As a result, incident logs, even if always properly updated, could be conspicuously calling out for a simple fix to the plan but no one would know, no changes would be made, and more workers would get hurt. We strongly urge the Division to return annual review requirements, for both the violent incident log and the prevention plan, to the draft standard.

Another key concept missing from the draft is the word "staffing". Unlike the health care standard, nothing in this version ties the issue of staffing—in particular, understaffing—to the hazard of workplace violence. Far too often, an employer's unwillingness to adequately staff a workplace inherently creates opportunities for violence or threats, as many individuals who would commit a violent act or make a threat are far more likely to do so if a worker is alone or with very few co-workers. That is why staffing is explicitly identified as a work control in 3342; the same should apply to the general industry standard.

3342 also requires, among several other control measures, "*maintaining sufficient staffing, including security personnel, who can maintain order in the facility and respond to workplace violence incidents in a timely manner*". While we understand that not every employer can maintain full-time security personnel, some absolutely can and must but do not. Discussions around this standard should explore ways of requiring certain employers in some circumstances to employ not just security personnel, but security personnel clearly directed to respond to workplace violence incidents in a timely manner. We very much want to avoid the risk of overpolicing and unnecessary confrontations with law enforcement, but a solution must exist in which these risks are minimized while workers are not simply left to constantly fend for themselves against often fatally violent individuals.

Finally, the standard should add language addressing the hazard of getting to and from work. Clearly, most employers cannot control much of what happens beyond the workplace and their actual property, but some put workers in grave danger by situating worksites such that no adequately safe way to get to work exists. In these cases, employers must be required to assess and minimize the risk of forcing workers to confront violent individuals and situations as a condition of employment before the workday even starts and immediately after it ends.

Overall, while we again very much believe a specific standard is needed and the general structure of this version is a good start, many outstanding issues remain to be addressed. We strongly urge the Division to steer this draft sharply towards the health care standard and align the two wherever possible. Adopting this version would create a troubling two-tier system, under which some health care workers have strong protections and everyone else suffers under something far less. There is no reason to abandon all workers not covered by 3342 to this fate and every reason to marry the two standards as exactly as can be done. Especially after years in a crippling pandemic, the workers of California deserve no less.

We appreciate the opportunity to comment and urge Cal/OSHA to amend the proposal as described.

Sincerely,

Mitch Steiger
Legislative Advocate
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