

AMENDED IN SENATE MARCH 28, 2023

AMENDED IN SENATE MARCH 20, 2023

SENATE BILL

No. 553

Introduced by Senator Cortese

February 15, 2023

An act to amend Section 527.8 of the Code of Civil Procedure, and to amend Section 6401.7 of, and to add Section 6401.9 to, the Labor Code, relating to occupational safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 553, as amended, Cortese. Occupational safety: workplace violence: restraining orders and workplace violence prevention plan.

Existing law authorizes any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried out or to have been carried out at the workplace, to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace, as described.

This bill would also authorize a collective bargaining representative of an employee, as described above, to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace, as described. The bill would make various conforming changes.

Existing law, the California Occupational Safety and Health Act of 1973, imposes safety responsibilities on employers and employees, including the requirement that an employer establish, implement, and maintain an effective injury prevention program, and makes specified violations of these provisions a crime. The act is enforced by the Division of Occupational Safety and Health within the Department of

Industrial Relations, including the enforcement of standards adopted by the Occupational Safety and Health Standards Board.

This bill would require every employer, as defined, to also establish, implement, and maintain a workplace violence prevention plan as part of the injury prevention program, as described. The bill would require the employer to record information in a violent incident log about every incident, postincident response, and workplace violence injury investigation required to be performed as part of the workplace violence prevention plan, as described. The bill would require the employer to establish and implement a system to review, at least annually and in conjunction with employees and their collective bargaining representatives, if any, the effectiveness of the workplace violence prevention plan, as described. The bill would require the employer to provide effective training to employees that addresses the workplace violence risks that employees may reasonably anticipate to encounter in their jobs, as described. The bill would require records of workplace violence hazard identification, evaluation, and correction to be created and maintained in accordance with specified law, except as provided. The bill would provide that an employer shall not prohibit an employee from, and shall not take punitive or retaliatory action against an employee for, seeking assistance and intervention from local emergency services or law enforcement when a violent incident occurs.

Because this bill would expand the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 527.8 of the Code of Civil Procedure is
2 amended to read:
3 527.8. (a) Any employer or collective bargaining representative
4 of an employee who has suffered unlawful violence or a credible
5 threat of violence from any individual, that can reasonably be
6 construed to be carried out or to have been carried out at the

1 workplace, may seek a temporary restraining order and an order
2 after hearing on behalf of the employee and, at the discretion of
3 the court, any number of other employees at the workplace, and,
4 if appropriate, other employees at other workplaces of the
5 employer. A collective bargaining representative seeking a
6 temporary restraining order and an order after hearing on behalf
7 of employees at other workplaces of the employer shall also be
8 the collective bargaining representative of those other employees.

9 (b) For purposes of this section:

10 (1) “Course of conduct” is a pattern of conduct composed of a
11 series of acts over a period of time, however short, evidencing a
12 continuity of purpose, including following or stalking an employee
13 to or from the place of work; entering the workplace; following
14 an employee during hours of employment; making telephone calls
15 to an employee; or sending correspondence to an employee by any
16 means, including, but not limited to, the use of the public or private
17 mails, interoffice mail, facsimile, or computer email.

18 (2) “Credible threat of violence” is a knowing and willful
19 statement or course of conduct that would place a reasonable person
20 in fear for their safety, or the safety of their immediate family, and
21 that serves no legitimate purpose.

22 (3) “Employer” and “employee” mean persons defined in
23 Section 350 of the Labor Code. “Employer” also includes a federal
24 agency, the state, a state agency, a city, county, or district, and a
25 private, public, or quasi-public corporation, or any public agency
26 thereof or therein. “Employee” also includes the members of boards
27 of directors of private, public, and quasi-public corporations and
28 elected and appointed public officers. For purposes of this section
29 only, “employee” also includes a volunteer or independent
30 contractor who performs services for the employer at the
31 employer’s worksite.

32 (4) “Petitioner” means the employer or collective bargaining
33 representative that petitions under subdivision (a) for a temporary
34 restraining order and order after hearing.

35 (5) “Respondent” means the person against whom the temporary
36 restraining order and order after hearing are sought and, if the
37 petition is granted, the restrained person.

38 (6) “Temporary restraining order” and “order after hearing”
39 mean orders that include any of the following restraining orders,
40 whether issued ex parte or after notice and hearing:

1 (A) An order enjoining a party from harassing, intimidating,
2 molesting, attacking, striking, stalking, threatening, sexually
3 assaulting, battering, abusing, telephoning, including, but not
4 limited to, making annoying telephone calls as described in Section
5 653m of the Penal Code, destroying personal property, contacting,
6 either directly or indirectly, by mail or otherwise, or coming within
7 a specified distance of, or disturbing the peace of, the employee.

8 (B) An order enjoining a party from specified behavior that the
9 court determines is necessary to effectuate orders described in
10 subparagraph (A).

11 (7) “Unlawful violence” is any assault or battery, or stalking as
12 prohibited in Section 646.9 of the Penal Code, but shall not include
13 lawful acts of self-defense or defense of others.

14 (c) This section does not permit a court to issue a temporary
15 restraining order or order after hearing prohibiting speech or other
16 activities that are constitutionally protected, or otherwise protected
17 by Section 527.3 or any other provision of law.

18 (d) In the discretion of the court, on a showing of good cause,
19 a temporary restraining order or order after hearing issued under
20 this section may include other named family or household
21 members, or other persons employed at the employee’s workplace
22 or workplaces.

23 (e) Upon filing a petition under this section, the petitioner may
24 obtain a temporary restraining order in accordance with subdivision
25 (a) of Section 527, if the petitioner also files a declaration that, to
26 the satisfaction of the court, shows reasonable proof that an
27 employee has suffered unlawful violence or a credible threat of
28 violence by the respondent, and that great or irreparable harm
29 would result to an employee. The temporary restraining order may
30 include any of the protective orders described in paragraph (6) of
31 subdivision (b).

32 (f) A request for the issuance of a temporary restraining order
33 without notice under this section shall be granted or denied on the
34 same day that the petition is submitted to the court, unless the
35 petition is filed too late in the day to permit effective review, in
36 which case the order shall be granted or denied on the next day of
37 judicial business in sufficient time for the order to be filed that day
38 with the clerk of the court.

39 (g) A temporary restraining order granted under this section
40 shall remain in effect, at the court’s discretion, for a period not to

1 exceed 21 days, or if the court extends the time for hearing under
2 subdivision (h), not to exceed 25 days, unless otherwise modified
3 or terminated by the court.

4 (h) Within 21 days, or if good cause appears to the court, 25
5 days from the date that a petition for a temporary order is granted
6 or denied, a hearing shall be held on the petition. If no request for
7 temporary orders is made, the hearing shall be held within 21 days,
8 or, if good cause appears to the court, 25 days, from the date that
9 the petition is filed.

10 (i) The respondent may file a response that explains, excuses,
11 justifies, or denies the alleged unlawful violence or credible threats
12 of violence.

13 (j) At the hearing, the judge shall receive any testimony that is
14 relevant and may make an independent inquiry. Moreover, if the
15 respondent is currently employed by the employer of the employee,
16 as described in subdivision (a), the judge shall receive evidence
17 concerning the employer's decision to retain, terminate, or
18 otherwise discipline the respondent. If the judge finds by clear and
19 convincing evidence that the respondent engaged in unlawful
20 violence or made a credible threat of violence, an order shall issue
21 prohibiting further unlawful violence or threats of violence.

22 (k) (1) In the discretion of the court, an order issued after notice
23 and hearing under this section may have a duration of not more
24 than three years, subject to termination or modification by further
25 order of the court either on written stipulation filed with the court
26 or on the motion of a party. These orders may be renewed, upon
27 the request of a party, for a duration of not more than three years,
28 without a showing of any further violence or threats of violence
29 since the issuance of the original order, subject to termination or
30 modification by further order of the court either on written
31 stipulation filed with the court or on the motion of a party. The
32 request for renewal may be brought at any time within the three
33 months before the expiration of the order.

34 (2) The failure to state the expiration date on the face of the
35 form creates an order with a duration of three years from the date
36 of issuance.

37 (3) If an action is filed for the purpose of terminating or
38 modifying a protective order prior to the expiration date specified
39 in the order by a party other than the protected party, the party
40 who is protected by the order shall be given notice, pursuant to

1 subdivision (b) of Section 1005, of the proceeding by personal
2 service or, if the protected party has satisfied the requirements of
3 Chapter 3.1 (commencing with Section 6205) of Division 7 of
4 Title 1 of the Government Code, by service on the Secretary of
5 State. If the party who is protected by the order cannot be notified
6 prior to the hearing for modification or termination of the protective
7 order, the court shall deny the motion to modify or terminate the
8 order without prejudice or continue the hearing until the party who
9 is protected can be properly noticed and may, upon a showing of
10 good cause, specify another method for service of process that is
11 reasonably designed to afford actual notice to the protected party.
12 The protected party may waive their right to notice if they are
13 physically present in court and does not challenge the sufficiency
14 of the notice.

15 (l) This section does not preclude any party from representation
16 by private counsel or from appearing on the party's own behalf.

17 (m) Upon filing of a petition under this section, the respondent
18 shall be personally served with a copy of the petition, temporary
19 restraining order, if any, and notice of hearing of the petition.
20 Service shall be made at least five days before the hearing. The
21 court may, for good cause, on motion of the petitioner or on its
22 own motion, shorten the time for service on the respondent.

23 (n) A notice of hearing under this section shall notify the
24 respondent that, if they do not attend the hearing, the court may
25 make orders against them that could last up to three years.

26 (o) The respondent shall be entitled, as a matter of course, to
27 one continuance, for a reasonable period, to respond to the petition.

28 (p) (1) Any party may request a continuance of the hearing,
29 which the court shall grant on a showing of good cause. The request
30 may be made in writing before or at the hearing or orally at the
31 hearing. The court may also grant a continuance on its own motion.

32 (2) If the court grants a continuance, any temporary restraining
33 order that has been granted shall remain in effect until the end of
34 the continued hearing, unless otherwise ordered by the court. In
35 granting a continuance, the court may modify or terminate a
36 temporary restraining order.

37 (q) (1) If a respondent, named in a restraining order issued
38 under this section after a hearing, has not been served personally
39 with the order but has received actual notice of the existence and
40 substance of the order through personal appearance in court to

1 hear the terms of the order from the court, no additional proof of
2 service is required for enforcement of the order.

3 (2) If the respondent named in a temporary restraining order is
4 personally served with the order and notice of hearing with respect
5 to a restraining order or protective order based on the temporary
6 restraining order, but the person does not appear at the hearing,
7 either personally or by an attorney, and the terms and conditions
8 of the restraining order or protective order issued at the hearing
9 are identical to the temporary restraining order, except for the
10 duration of the order, then the restraining order or protective order
11 issued at the hearing may be served on the person by first-class
12 mail sent to that person at the most current address for the person
13 available to the court.

14 (3) The Judicial Council form for temporary orders issued
15 pursuant to this subdivision shall contain a statement in
16 substantially the following form:

17
18 “If you have been personally served with this temporary
19 restraining order and notice of hearing, but you do not appear at
20 the hearing either in person or by a lawyer, and a restraining order
21 that is the same as this restraining order except for the expiration
22 date is issued at the hearing, a copy of the order will be served on
23 you by mail at the following address: _____.

24 If that address is not correct or you wish to verify that the
25 temporary restraining order was converted to a restraining order
26 at the hearing without substantive change and to find out the
27 duration of that order, contact the clerk of the court.”

28
29 (r) (1) Information on a temporary restraining order or order
30 after hearing relating to workplace violence issued by a court
31 pursuant to this section shall be transmitted to the Department of
32 Justice in accordance with either paragraph (2) or (3).

33 (2) The court shall order the petitioner or the attorney for the
34 petitioner to deliver a copy of any order issued under this section,
35 or a reissuance, extension, modification, or termination of the
36 order, and any subsequent proof of service, by the close of the
37 business day on which the order, reissuance, extension,
38 modification, or termination was made, to each law enforcement
39 agency having jurisdiction over the residence of the petitioner and

1 to any additional law enforcement agencies within the court's
2 discretion as are requested by the petitioner.

3 (3) Alternatively, the court or its designee shall transmit, within
4 one business day, to law enforcement personnel all information
5 required under subdivision (b) of Section 6380 of the Family Code
6 regarding any order issued under this section, or a reissuance,
7 extension, modification, or termination of the order, and any
8 subsequent proof of service, by either one of the following
9 methods:

10 (A) Transmitting a physical copy of the order or proof of service
11 to a local law enforcement agency authorized by the Department
12 of Justice to enter orders into the California Law Enforcement
13 Telecommunications System (CLETS).

14 (B) With the approval of the Department of Justice, entering
15 the order or proof of service into CLETS directly.

16 (4) Each appropriate law enforcement agency shall make
17 available information as to the existence and current status of these
18 orders to law enforcement officers responding to the scene of
19 reported unlawful violence or a credible threat of violence.

20 (5) At the request of the petitioner, an order issued under this
21 section shall be served on the respondent, regardless of whether
22 the respondent has been taken into custody, by any law
23 enforcement officer who is present at the scene of reported
24 unlawful violence or a credible threat of violence involving the
25 parties to the proceedings. The petitioner shall provide the officer
26 with an endorsed copy of the order and proof of service that the
27 officer shall complete and send to the issuing court.

28 (6) Upon receiving information at the scene of an incident of
29 unlawful violence or a credible threat of violence that a protective
30 order has been issued under this section, or that a person who has
31 been taken into custody is the subject of an order, if the petitioner
32 or the protected person cannot produce an endorsed copy of the
33 order, a law enforcement officer shall immediately attempt to
34 verify the existence of the order.

35 (7) If the law enforcement officer determines that a protective
36 order has been issued but not served, the officer shall immediately
37 notify the respondent of the terms of the order and obtain the
38 respondent's address. The law enforcement officer shall at that
39 time also enforce the order, but may not arrest or take the
40 respondent into custody for acts in violation of the order that were

1 committed prior to the verbal notice of the terms and conditions
2 of the order. The law enforcement officer's verbal notice of the
3 terms of the order shall constitute service of the order and
4 constitutes sufficient notice for the purposes of this section and
5 for the purposes of Section 29825 of the Penal Code. The petitioner
6 shall mail an endorsed copy of the order to the respondent's mailing
7 address provided to the law enforcement officer within one
8 business day of the reported incident of unlawful violence or a
9 credible threat of violence at which a verbal notice of the terms of
10 the order was provided by a law enforcement officer.

11 (s) (1) A person subject to a protective order issued under this
12 section shall not own, possess, purchase, receive, or attempt to
13 purchase or receive a firearm or ammunition while the protective
14 order is in effect.

15 (2) The court shall order a person subject to a protective order
16 issued under this section to relinquish any firearms they own or
17 possess pursuant to Section 527.9.

18 (3) Every person who owns, possesses, purchases or receives,
19 or attempts to purchase or receive a firearm or ammunition while
20 the protective order is in effect is punishable pursuant to Section
21 29825 of the Penal Code.

22 (t) Any intentional disobedience of any temporary restraining
23 order or order after hearing granted under this section is punishable
24 pursuant to Section 273.6 of the Penal Code.

25 (u) This section shall not be construed as expanding,
26 diminishing, altering, or modifying the duty, if any, of an employer
27 to provide a safe workplace for employees and other persons.

28 (v) (1) The Judicial Council shall develop forms, instructions,
29 and rules for relating to matters governed by this section. The
30 forms for the petition and response shall be simple and concise,
31 and their use by parties in actions brought pursuant to this section
32 shall be mandatory.

33 (2) A temporary restraining order or order after hearing relating
34 to unlawful violence or a credible threat of violence issued by a
35 court pursuant to this section shall be issued on forms adopted by
36 the Judicial Council of California and that have been approved by
37 the Department of Justice pursuant to subdivision (i) of Section
38 6380 of the Family Code. However, the fact that an order issued
39 by a court pursuant to this section was not issued on forms adopted

1 by the Judicial Council and approved by the Department of Justice
2 shall not, in and of itself, make the order unenforceable.

3 (w) There is no filing fee for a petition that alleges that a person
4 has inflicted or threatened violence against an employee employed
5 or represented by the petitioner, or stalked the employee, or acted
6 or spoken in any other manner that has placed the employee in
7 reasonable fear of violence, and that seeks a protective or
8 restraining order restraining stalking or future violence or threats
9 of violence, in any action brought pursuant to this section. A fee
10 shall not be paid for a subpoena filed in connection with a petition
11 alleging these acts. A fee shall not be paid for filing a response to
12 a petition alleging these acts.

13 (x) (1) Subject to paragraph (4) of subdivision (b) of Section
14 6103.2 of the Government Code, there shall be no fee for the
15 service of process by a sheriff or marshal of a temporary restraining
16 order or order after hearing to be issued pursuant to this section if
17 either of the following conditions applies:

18 (A) The temporary restraining order or order after hearing issued
19 pursuant to this section is based upon stalking, as prohibited by
20 Section 646.9 of the Penal Code.

21 (B) The temporary restraining order or order after hearing issued
22 pursuant to this section is based on unlawful violence or a credible
23 threat of violence.

24 (2) The Judicial Council shall prepare and develop forms for
25 persons who wish to avail themselves of the services described in
26 this subdivision.

27 SEC. 2. Section 6401.7 of the Labor Code is amended to read:

28 6401.7. (a) Every employer shall establish, implement, and
29 maintain an effective injury prevention program. The program
30 shall be written, except as provided in subdivision (e), and shall
31 include, but not be limited to, the following elements:

32 (1) Identification of the person or persons responsible for
33 implementing the program.

34 (2) The employer's system for identifying and evaluating
35 workplace hazards, including scheduled periodic inspections to
36 identify unsafe conditions and work practices.

37 (3) The employer's methods and procedures for correcting
38 unsafe or unhealthy conditions and work practices in a timely
39 manner.

1 (4) An occupational health and safety training program designed
2 to instruct employees in general safe and healthy work practices
3 and to provide specific instruction with respect to hazards specific
4 to each employee’s job assignment.

5 (5) The employer’s system for communicating with employees
6 on occupational health and safety matters, including provisions
7 designed to encourage employees to inform the employer of
8 hazards at the worksite without fear of reprisal.

9 (6) The employer’s system for ensuring that employees comply
10 with safe and healthy work practices, which may include
11 disciplinary action.

12 (7) A workplace violence prevention plan conforming with the
13 requirements of Section 6401.9.

14 (b) The employer shall correct unsafe and unhealthy conditions
15 and work practices in a timely manner based on the severity of the
16 hazard.

17 (c) The employer shall train all employees when the training
18 program is first established, all new employees, and all employees
19 given a new job assignment, and shall train employees whenever
20 new substances, processes, procedures, or equipment are introduced
21 to the workplace and represent a new hazard, and whenever the
22 employer receives notification of a new or previously unrecognized
23 hazard. An employer in the construction industry who is required
24 to be licensed under Chapter 9 (commencing with Section 7000)
25 of Division 3 of the Business and Professions Code may use
26 employee training provided to the employer’s employees under a
27 construction industry occupational safety and health training
28 program approved by the division to comply with the requirements
29 of subdivision (a) relating to employee training, and shall only be
30 required to provide training on hazards specific to an employee’s
31 job duties.

32 (d) The employer shall keep appropriate records of steps taken
33 to implement and maintain the program. An employer in the
34 construction industry who is required to be licensed under Chapter
35 9 (commencing with Section 7000) of Division 3 of the Business
36 and Professions Code may use records relating to employee training
37 provided to the employer in connection with an occupational safety
38 and health training program approved by the division to comply
39 with this subdivision, and shall only be required to keep records

1 of those steps taken to implement and maintain the program with
2 respect to hazards specific to an employee's job duties.

3 (e) (1) The standards board shall adopt a standard setting forth
4 the employer's duties under this section, on or before January 1,
5 1991, consistent with the requirements specified in subdivisions
6 (a), (b), (c), and (d). The standards board, in adopting the standard,
7 shall include substantial compliance criteria for use in evaluating
8 an employer's injury prevention program. The board may adopt
9 less stringent criteria for employers with few employees and for
10 employers in industries with insignificant occupational safety or
11 health hazards.

12 (2) Notwithstanding subdivision (a), for employers with fewer
13 than 20 employees who are in industries that are not on a
14 designated list of high hazard industries and who have a workers'
15 compensation experience modification rate of 1.1 or less, and for
16 any employers with fewer than 20 employees who are in industries
17 that are on a designated list of low hazard industries, the board
18 shall adopt a standard setting forth the employer's duties under
19 this section consistent with the requirements specified in
20 subdivisions (a), (b), and (c), except that the standard shall only
21 require written documentation to the extent of documenting the
22 person or persons responsible for implementing the program
23 pursuant to paragraph (1) of subdivision (a), keeping a record of
24 periodic inspections pursuant to paragraph (2) of subdivision (a),
25 and keeping a record of employee training pursuant to paragraph
26 (4) of subdivision (a). To any extent beyond the specifications of
27 this subdivision, the standard shall not require the employer to
28 keep the records specified in subdivision (d).

29 (3) (A) The division shall establish a list of high hazard
30 industries using the methods prescribed in Section 6314.1 for
31 identifying and targeting employers in high hazard industries. For
32 purposes of this subdivision, the "designated list of high hazard
33 industries" shall be the list established pursuant to this paragraph.

34 (B) For the purpose of implementing this subdivision, the
35 Department of Industrial Relations shall periodically review, and
36 as necessary revise, the list.

37 (4) For the purpose of implementing this subdivision, the
38 Department of Industrial Relations shall also establish a list of low
39 hazard industries, and shall periodically review, and as necessary
40 revise, that list.

1 (f) The standard adopted pursuant to subdivision (e) shall
2 specifically permit employer and employee occupational safety
3 and health committees to be included in the employer's injury
4 prevention program. The board shall establish criteria for use in
5 evaluating employer and employee occupational safety and health
6 committees. The criteria shall include minimum duties, including
7 the following:

8 (1) Review of the employer's periodic, scheduled worksite
9 inspections; investigation of causes of incidents resulting in injury,
10 illness, or exposure to hazardous substances; and investigation of
11 any alleged hazardous condition brought to the attention of any
12 committee member. When determined necessary by the committee,
13 the committee may conduct its own inspections and investigations.

14 (2) (A) Upon request from the division, verification of
15 abatement action taken by the employer as specified in division
16 citations.

17 (B) If an employer's occupational safety and health committee
18 meets the criteria established by the board, it shall be presumed to
19 be in substantial compliance with paragraph (5) of subdivision (a).

20 (g) The division shall adopt regulations specifying the
21 procedures for selecting employee representatives for
22 employer-employee occupational health and safety committees
23 when these procedures are not specified in an applicable collective
24 bargaining agreement. No employee or employee organization
25 shall be held liable for any act or omission in connection with a
26 health and safety committee.

27 (h) The employer's injury prevention program, as required by
28 this section, shall cover all of the employer's employees and all
29 other workers who the employer controls or directs and directly
30 supervises on the job to the extent these workers are exposed to
31 worksite and job assignment specific hazards. Nothing in this
32 subdivision shall affect the obligations of a contractor or other
33 employer that controls or directs and directly supervises its own
34 employees on the job.

35 (i) When a contractor supplies its employee to a state agency
36 employer on a temporary basis, the state agency employer may
37 assess a fee upon the contractor to reimburse the state agency for
38 the additional costs, if any, of including the contract employee
39 within the state agency's injury prevention program.

1 (j) (1) The division shall prepare a Model Injury and Illness
2 Prevention Program for Non-High-Hazard Employment, and shall
3 make copies of the model program prepared pursuant to this
4 subdivision available to employers, upon request, for posting in
5 the workplace. An employer who adopts and implements the model
6 program prepared by the division pursuant to this paragraph in
7 good faith shall not be assessed a civil penalty for the first citation
8 for a violation of this section issued after the employer's adoption
9 and implementation of the model program.

10 (2) For purposes of this subdivision, the division shall establish
11 a list of non-high-hazard industries in California. These industries,
12 identified by their Standard Industrial Classification Codes, as
13 published by the United States Office of Management and Budget
14 in the Manual of Standard Industrial Classification Codes, 1987
15 Edition, are apparel and accessory stores (Code 56), eating and
16 drinking places (Code 58), miscellaneous retail (Code 59), finance,
17 insurance, and real estate (Codes 60–67), personal services (Code
18 72), business services (Code 73), motion pictures (Code 78) except
19 motion picture production and allied services (Code 781), legal
20 services (Code 81), educational services (Code 82), social services
21 (Code 83), museums, art galleries, and botanical and zoological
22 gardens (Code 84), membership organizations (Code 86),
23 engineering, accounting, research, management, and related
24 services (Code 87), private households (Code 88), and
25 miscellaneous services (Code 89). To further identify industries
26 that may be included on the list, the division shall also consider
27 data from a rating organization, as defined in Section 11750.1 of
28 the Insurance Code, and all other appropriate information. The list
29 shall be established by June 30, 1994, and shall be reviewed, and
30 as necessary revised, biennially.

31 (3) The division shall prepare a Model Injury and Illness
32 Prevention Program for Employers in Industries with Intermittent
33 Employment, and shall determine which industries have historically
34 utilized seasonal or intermittent employees. An employer in an
35 industry determined by the division to have historically utilized
36 seasonal or intermittent employees shall be deemed to have
37 complied with the requirements of subdivision (a) with respect to
38 a written injury prevention program if the employer adopts the
39 model program prepared by the division pursuant to this paragraph
40 and complies with any instructions relating thereto.

1 (k) With respect to any county, city, city and county, or district,
2 or any public or quasi-public corporation or public agency therein,
3 including any public entity, other than a state agency, that is a
4 member of, or created by, a joint powers agreement, subdivision
5 (d) shall not apply.

6 (l) Every workers' compensation insurer shall conduct a review,
7 including a written report as specified below, of the injury and
8 illness prevention program (IIPP) of each of its insureds with an
9 experience modification of 2.0 or greater within six months of the
10 commencement of the initial insurance policy term. The review
11 shall determine whether the insured has implemented all of the
12 required components of the IIPP, and evaluate their effectiveness.
13 The training component of the IIPP shall be evaluated to determine
14 whether training is provided to line employees, supervisors, and
15 upper level management, and effectively imparts the information
16 and skills each of these groups needs to ensure that all of the
17 insured's specific health and safety issues are fully addressed by
18 the insured. The reviewer shall prepare a detailed written report
19 specifying the findings of the review and all recommended changes
20 deemed necessary to make the IIPP effective. The reviewer shall
21 be or work under the direction of a licensed California professional
22 engineer, certified safety professional, or a certified industrial
23 hygienist.

24 SEC. 3. Section 6401.9 is added to the Labor Code, to read:

25 6401.9. (a) For purposes of this section, the following
26 definitions apply:

27 (1) "Employer" means either of the following, but does not
28 include an employer subject to Section 3342 of Title 8 of the Code
29 of Regulations:

30 (A) A person who employs ~~five~~ *one* or more persons to perform
31 services for a wage or salary.

32 (B) The state and any political or civil subdivision of the state,
33 including, but not limited to, cities and counties.

34 (2) "Alarm" means a mechanical, electrical, or electronic device
35 that does not rely upon an employee's vocalization in order to alert
36 others.

37 (3) "Engineering controls" means an aspect of the built space
38 or a device that removes a hazard from the workplace or creates
39 a barrier between the worker and the hazard. For purposes of
40 reducing workplace violence hazards, "engineering controls"

1 include, but are not limited to, electronic access controls to
2 employee occupied areas, installed or handheld weapon detectors,
3 enclosed workstations with shatter-resistant glass, deep service
4 counters, locks on doors, closed-circuit television monitoring and
5 video recording, sight aids, and personal alarm devices.

6 (4) “Environmental risk factors” means factors in the facility
7 or area in which services or operations are conducted that may
8 contribute to the likelihood or severity of a workplace violence
9 incident. “Environmental risk factors” include, but are not limited
10 to, risk factors associated with the specific task being performed,
11 such as the collection of money.

12 (5) “Threat of violence” means a statement or conduct that
13 causes a person to fear for the person’s safety because there is a
14 reasonable possibility the person might be physically injured, and
15 that serves no legitimate purpose.

16 (6) “Work practice controls” means procedures, rules, and
17 staffing which are used to effectively reduce workplace violence
18 hazards. Work practice controls include, but are not limited to,
19 appropriate staffing levels, provision of dedicated safety personnel,
20 such as security guards, employee training on workplace violence
21 prevention methods, and employee training on procedures to follow
22 in the event of a workplace violence incident.

23 (7) “Workplace violence” means any act of violence or threat
24 of violence that occurs at the workplace. The term workplace
25 violence shall not include lawful acts of self-defense or defense
26 of others. Workplace violence includes any of the following:

27 (A) The threat or use of physical force against an employee that
28 results in, or has a high likelihood of resulting in, injury,
29 psychological trauma, or stress, regardless of whether the employee
30 sustains an injury.

31 (B) Conduct that seriously alarms, annoys, or harasses an
32 employee, that serves no legitimate purpose, and that has a high
33 likelihood of resulting in psychological trauma or stress, regardless
34 of whether the employee sustains an injury, including, but not
35 limited to, verbal harassment based at least in part on one or more
36 actual or perceived characteristics listed in subdivision (a) of
37 Section 422.55 of the Penal Code.

38 (C) An incident involving the use of a firearm or other dangerous
39 weapon, regardless of whether the employee sustains an injury.

1 (b) As part of the injury prevention program required by Section
2 6401.7, every employer shall establish, implement, and maintain,
3 at all times in all of the employer's facilities, a workplace violence
4 prevention plan for purposes of protecting employees and other
5 personnel from aggressive and violent behavior at the workplace.
6 The workplace violence prevention plan may be incorporated into
7 the written injury prevention program as a separate chapter or may
8 be maintained as a separate document, and shall include all of the
9 following elements:

10 (1) The names or job titles of the persons responsible for
11 implementing and maintaining the workplace violence prevention
12 plan.

13 (2) Effective procedures to obtain the active involvement of
14 employees and their collective bargaining representatives, if any,
15 in developing, implementing, and reviewing the workplace violence
16 prevention plan, including their participation in identifying,
17 evaluating, and correcting workplace violence hazards, designing
18 and implementing training, and reporting and investigating
19 workplace violence incidents.

20 (3) Methods the employer will use to coordinate implementation
21 of the workplace violence prevention plan with other employers
22 whose employees work in the same facility, department, or
23 operation, to ensure that those employers and employees
24 understand their respective roles as provided in the workplace
25 violence prevention plan. These methods shall ensure that all
26 employees are provided the training required by subdivision (e)
27 and shall ensure that workplace violence incidents involving any
28 employee are reported, investigated, and recorded.

29 (4) Effective procedures for obtaining assistance from the
30 appropriate law enforcement agency during all work shifts. The
31 procedure may establish a central coordination procedure and shall
32 also include a policy statement prohibiting the employer from
33 disallowing an employee from, or taking punitive or retaliatory
34 action against an employee for, seeking assistance and intervention
35 from local emergency services or law enforcement when a violent
36 incident occurs.

37 (5) Effective procedures for the employer to accept and respond
38 to reports of workplace violence and to prohibit retaliation against
39 an employee who makes such a report.

- 1 (6) Procedures to ensure that supervisory and nonsupervisory
2 employees comply with the workplace violence prevention plan.
- 3 (7) Procedures to communicate with employees regarding
4 workplace violence matters, including:
- 5 (A) How employees will document and communicate to other
6 employees and between shifts and departments, facilities, or
7 operations, information regarding conditions that may increase the
8 potential for workplace violence incidents.
- 9 (B) How an employee can report a violent incident, threat, or
10 other workplace violence concern.
- 11 (C) How employees can communicate workplace violence
12 concerns without fear of reprisal.
- 13 (D) How employee concerns will be investigated and how
14 employees will be informed of the results of the investigation and
15 any corrective actions to be taken.
- 16 (8) Procedures to develop and provide the training required in
17 subdivision (e). Employees and their collective bargaining
18 representatives, if any, shall be allowed to participate in developing
19 the training.
- 20 (9) Assessment procedures to identify and evaluate
21 environmental risk factors, including community-based risk factors,
22 for each facility, department, or operation. These procedures shall
23 include a review of all workplace violence incidents that occurred
24 in the facility, department, or operation within the previous year,
25 regardless of whether an injury occurred. This shall also include
26 procedures to identify and evaluate environmental risk factors for
27 workplace violence in each facility, department, or operation of
28 the establishment, including surrounding areas, such as employee
29 parking areas and other outdoor areas. Assessment tools,
30 environmental checklists, or other effective means shall be used
31 to identify locations and situations where violent incidents are
32 more likely to occur. These procedures shall specify the frequency
33 with which such environmental assessments will take place.
34 Environmental risk factors shall include, but are not limited to, the
35 following:
- 36 (A) Employees working in locations isolated from other
37 employees because their assignment requires them to work alone,
38 in remote locations, during night or early morning hours, or where
39 an assailant could prevent entry into the work area by responders
40 or other employees.

1 (B) Poor illumination or blocked visibility of areas where
2 possible assailants may be present.

3 (C) Lack of physical barriers between employees and persons
4 at risk of committing workplace violence.

5 (D) Lack of effective escape routes.

6 (E) Obstacles and impediments to accessing alarm systems.

7 (F) Locations within the facility where alarm systems are not
8 operational.

9 (G) Entryways where unauthorized entrance may occur, such
10 as doors designated for staff entrance or emergency exits.

11 (H) Storage of high-value items or currency.

12 (10) Procedures to correct workplace violence hazards in a
13 timely manner. Engineering and work practice controls shall be
14 used to eliminate or minimize employee exposure to the identified
15 hazards to the extent feasible. The procedures shall include
16 measures that the employer will take to protect employees from
17 imminent hazards immediately and to protect employees from
18 identified serious hazards within seven days of the discovery of
19 the hazard where there is a realistic possibility that death or serious
20 physical harm could result from the hazard. The procedures shall
21 also include, when an identified corrective measure cannot be
22 implemented within this timeframe, interim measures the employer
23 will take to abate the imminent or serious nature of the hazard
24 while completing the permanent control measures. Corrective
25 measures shall include, but are not limited to, the following:

26 (A) Ensuring that sufficient numbers of staff are trained and
27 available to prevent and immediately respond to workplace
28 violence incidents during each shift. A staff person is not
29 considered to be available if other assignments prevent the person
30 from immediately responding to an alarm or other notification of
31 a violent incident.

32 (B) Providing line of sight or other immediate communication
33 in all areas where members of the public may be present. This may
34 include removal of sight barriers, provision of surveillance systems
35 or other sight aids such as mirrors, use of a buddy system,
36 improving illumination, or other effective means.

37 (C) Configuring facility spaces so that employee access to doors
38 and alarm systems cannot be impeded by persons or obstacles.

1 (D) Maintaining sufficient staffing, including security personnel,
2 who can maintain order in the facility and respond to workplace
3 violence incidents in a timely manner.

4 (E) Installing, implementing, and maintaining the use of an
5 alarm system or other effective means by which employees can
6 summon security and other aid to defuse or respond to an actual
7 or potential workplace violence emergency.

8 (F) Creating an effective means by which employees can be
9 alerted to the presence, location, and nature of a security threat.

10 (G) Establishing an effective response plan for actual or potential
11 workplace violence emergencies that includes obtaining help from
12 facility security or law enforcement agencies as appropriate.
13 Employees designated to respond to emergencies must not have
14 other assignments that would prevent them from responding
15 immediately to an alarm to assist other staff. The response plan
16 shall also include procedures to respond to mass casualty threats,
17 such as active shooters, by developing evacuation or sheltering
18 plans that are appropriate and feasible for the facility, a procedure
19 for warning employees of the situation, and a procedure for
20 contacting the appropriate law enforcement agency.

21 (11) Procedures for postincident response and investigation,
22 including:

23 (A) Providing immediate medical care or first aid to employees
24 who have been injured in the incident.

25 (B) Identifying all employees involved in the incident.

26 (C) Making available individual trauma counseling to all
27 employees affected by the incident.

28 (D) Referring employees affected by the incident to worker
29 wellness centers, or employee assistance programs, as appropriate
30 and available.

31 (E) Conducting a postincident debriefing as soon as possible
32 after the incident with all employees, supervisors, and security
33 involved in the incident.

34 (F) Reviewing whether appropriate corrective measures
35 developed under the workplace violence prevention plan, such as
36 adequate staffing, provision and use of alarms or other means of
37 summoning assistance, and response by staff or law enforcement,
38 were effectively implemented.

39 (G) Soliciting from the injured employee and other personnel
40 involved in the incident, and their collective bargaining

1 representative, if any, their opinions regarding the cause of the
2 incident, and whether any measure would have prevented the
3 injury.

4 (12) Provisions prohibiting the employer from maintaining
5 policies that require employees to confront active shooters or
6 suspected shoplifters.

7 (c) The employer shall record information in a violent incident
8 log about every incident, postincident response, and workplace
9 violence injury investigation performed in accordance with
10 paragraph (11) of subdivision (b). Information about each incident
11 shall be based on information solicited from the employees who
12 experienced the workplace violence. The employer shall omit from
13 the violent incident log any element of personal identifying
14 information sufficient to allow identification of any person involved
15 in a violent incident, such as the person's name, address, electronic
16 mail address, telephone number, social security number, or other
17 information that, alone or in combination with other publicly
18 available information, reveals the person's identity. The violent
19 incident log shall be reviewed during the annual review of the
20 workplace violence prevention plan required in subdivision (d).
21 The information recorded in the violent incident log shall include,
22 but is not limited to:

23 (1) The date, time, specific location, and department of the
24 incident.

25 (2) A detailed description of the incident.

26 (3) A classification of who committed the violence, including
27 whether the perpetrator was a client or customer, family or friend
28 of a client or customer, stranger with criminal intent, coworker,
29 supervisor or manager, partner or spouse, parent or relative, or
30 other perpetrator.

31 (4) A classification of circumstances at the time of the incident,
32 including, but not limited to, whether the employee was completing
33 usual job duties, working in poorly lit areas, rushed, working during
34 a low staffing level, in a high crime area, isolated or alone, unable
35 to get help or assistance, working in a community setting, working
36 in an unfamiliar or new location, or other circumstances.

37 (5) A classification of where the incident occurred, including,
38 but not limited to, whether it was in an office, sales floor, hallway,
39 restroom or bathroom, parking lot or other area outside the
40 building, personal residence, break room, cafeteria, or other area.

- 1 (6) The type of incident, including whether it involved any of
2 the following:
- 3 (A) Physical attack, including biting, choking, grabbing, hair
4 pulling, kicking, punching, slapping, pushing, pulling, scratching,
5 or spitting.
- 6 (B) Attack with a weapon or object, including a gun, knife, or
7 other object.
- 8 (C) Threat of physical force or threat of the use of a weapon or
9 other object.
- 10 (D) Sexual assault or threat, including rape or attempted rape,
11 physical display, or unwanted verbal or physical sexual contact.
- 12 (E) Verbal harassment.
- 13 (F) Animal attack.
- 14 (G) Other.
- 15 (7) Consequences of the incident, including:
- 16 (A) Whether medical treatment was provided to the employee.
- 17 (B) Who, if anyone, provided necessary assistance to conclude
18 the incident.
- 19 (C) Whether security was contacted and whether law
20 enforcement was contacted.
- 21 (D) Amount of lost time from work, if any.
- 22 (E) Actions taken to protect employees from a continuing threat,
23 if any.
- 24 (8) Information about the person completing the violent incident
25 log, including their name, job title, phone number, email address,
26 and the date completed.
- 27 (d) (1) The employer shall establish and implement a system
28 to review, at least annually and in conjunction with employees and
29 their collective bargaining representatives, if any, the effectiveness
30 of the workplace violence prevention plan for the overall facility
31 or operation in relation to the employees' respective work areas,
32 services, and operations. Problems found during the review shall
33 be corrected in accordance with paragraph (10) of subdivision (b).
34 The review shall include an evaluation of the following:
- 35 (A) Staffing, including staffing patterns that contribute to, or
36 are insufficient to address, the risk of violence.
- 37 (B) Sufficiency of security systems, including alarms,
38 emergency response, and security personnel availability.
- 39 (C) Job design, equipment, and facilities.

1 (D) Security risks associated with specific units, areas of the
2 facility with uncontrolled access, late-night or early morning shifts,
3 and employee security in areas surrounding the facility, such as
4 employee parking areas and other outdoor areas.

5 (2) Based on the review in paragraph (1), the workplace violence
6 prevention plan shall be updated, in accordance with subparagraphs
7 (B) and (C) of paragraph (4) of subdivision (a) of Section 3203 of
8 Title 8 of the Code of Regulations, in a manner that is specific to
9 each of the units within a facility, the facility as a whole, or the
10 particular operation, as applicable, if necessary. When an update
11 is necessary pursuant to this paragraph for only part of the facility
12 or operation, the update may be limited to the employees in the
13 units or operations affected by the update, independently of the
14 annual review for the facility as a whole, as described in paragraph
15 (1). The updates shall include the following:

16 (A) New or modified tasks and procedures which may affect
17 how the workplace violence prevention plan is implemented, such
18 as changes in staffing, engineering controls, construction or
19 modification of the facilities, evacuation procedures, alarm systems
20 and emergency response.

21 (B) Newly recognized workplace violence hazards.

22 (C) A review and evaluation of workplace violence incidents
23 which result in a serious injury or fatality.

24 (D) A review and response to information indicating that the
25 workplace violence prevention plan is deficient in any area.

26 (e) (1) The employer shall provide effective training to
27 employees, as specified in paragraph (2), that addresses the
28 workplace violence risks that employees may reasonably anticipate
29 to encounter in their jobs. The employer shall have an effective
30 procedure for obtaining the active involvement of employees and
31 their collective bargaining representatives, if any, in developing
32 training curricula and training materials, participating in training
33 sessions, and reviewing and revising the training program. Training
34 material appropriate in content and vocabulary to the educational
35 level, literacy, and language of employees shall be used. All
36 employees of the employer shall receive all training required by
37 this subdivision in person, during work time, at the workplace,
38 and in an atmosphere designed to provide an opportunity for
39 interactive questions and answers with a person knowledgeable
40 about the workplace violence prevention plan.

1 (2) All employees working in the facility, unit, service, or
2 operation shall be provided all of the following trainings:

3 (A) Initial training when the workplace violence prevention
4 plan is first established and when an employee is newly hired or
5 newly assigned to perform duties for which the training required
6 in this subparagraph was not previously provided. The training
7 required by this subparagraph shall address the workplace violence
8 hazards identified in the facility, unit, service, or operation, shall
9 address the corrective measures the employer has implemented,
10 and shall include the following:

11 (i) An explanation of the employer's workplace violence
12 prevention plan, including the employer's hazard identification
13 and evaluation procedures, general and personal safety measures
14 the employer has implemented, how the employee may
15 communicate concerns about workplace violence without fear of
16 reprisal, how the employer will address workplace violence
17 incidents, and how the employee can participate in reviewing and
18 revising the plan.

19 (ii) How to recognize the potential for violence, factors
20 contributing to the escalation of violence and how to counteract
21 them, and when and how to seek assistance to prevent or respond
22 to violence.

23 (iii) Strategies to avoid physical harm.

24 (iv) How to recognize alerts, alarms, or other warnings about
25 emergency conditions such as mass casualty threats and how to
26 use identified escape routes or locations for sheltering, as
27 applicable.

28 (v) How to prepare for and respond to an active shooter scenario
29 at the workplace.

30 (vi) How to prepare for and respond to shoplifting, if the
31 employees work in retail.

32 (vii) The role of private security personnel, if any.

33 (viii) How to report violent incidents to law enforcement.

34 (ix) Any resources available to employees for coping with
35 incidents of violence, including, but not limited to, critical incident
36 stress debriefing or employee assistance programs.

37 (x) An opportunity for interactive questions and answers with
38 a person knowledgeable about the employer's workplace violence
39 prevention plan,

1 (B) Additional training, which shall be provided when new
2 equipment or work practices are introduced or when a new or
3 previously unrecognized workplace violence hazard has been
4 identified. The additional training may be limited to addressing
5 the new equipment or work practice or new workplace hazard.

6 (C) Training on the topics in clauses (i) to (x), inclusive, of
7 subparagraph (A) at least annually thereafter.

8 (f) (1) Records of workplace violence hazard identification,
9 evaluation, and correction shall be created and maintained in
10 accordance with paragraph (1) of subdivision (b) of Section 3203
11 of Title 8 of the Code of Regulations, except that the exception to
12 paragraph (1) of subdivision (b) of Section 3203 of Title 8 of the
13 Code of Regulations shall not apply.

14 (2) Training records shall be created and maintained for a
15 minimum of one year and include training dates, contents or a
16 summary of the training sessions, names and qualifications of
17 persons conducting the training, and names and job titles of all
18 persons attending the training sessions. Exception No. 1 to
19 paragraph (2) of subdivision (b) of Section 3203 of Title 8 of the
20 Code of Regulations shall not apply to these training records.

21 (3) Records of violent incidents, including, but not limited to,
22 violent incident logs required by subdivision (c) and workplace
23 violence injury investigations conducted pursuant to paragraph
24 (11) of subdivision (b), shall be maintained for a minimum of five
25 years or pursuant to other law, whichever is greater.
26 Notwithstanding any law, these records shall not contain “medical
27 information,” as defined by subdivision (i) of Section 56.05 of the
28 Civil Code.

29 (4) All records required by this subdivision shall be made
30 available to employees and their collective bargaining
31 representatives, if any, on request, for examination and copying.

32 (g) An employer shall not prohibit an employee from, and shall
33 not take punitive or retaliatory action against an employee for,
34 seeking assistance and intervention from local emergency services
35 or law enforcement when a violent incident occurs.

36 SEC. 4. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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