
THIRD READING

Bill No: SB 553
Author: Cortese (D)
Amended: 5/22/23
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 5-0, 4/12/23
AYES: Cortese, Wilk, Durazo, Laird, Smallwood-Cuevas

SENATE JUDICIARY COMMITTEE: 10-1, 4/25/23
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Stern,
Wiener
NOES: Niello

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Jones, Seyarto

SUBJECT: Occupational safety: workplace violence: restraining orders and
workplace violence prevention plan

SOURCE: United Food and Commercial Workers, Western States Council

DIGEST: This bill requires employers to establish, implement and maintain a workplace violence prevention plan that includes, in addition to other elements, record keeping, hazard evaluation and corrections, annual trainings requirements and protections for employees seeking assistance and intervention from local emergency services or law enforcement when a violent incident occurs. Additionally, the bill authorizes a collective bargaining representative of an employee who has suffered unlawful violence from any individual, to seek a temporary restraining order (TRO) and an order after hearing on behalf of the employee at the workplace.

Senate Amendments of 5/22/23 1) delay for one year the implementation of the Temporary Restraining Order (TRO) provisions; 2) clarify that only a person who serves as a collective bargaining representative for that employee may bring a TRO

or order after hearing on behalf of such employee; and 3) narrow the “workplace violence” definition to remove verbal harassment.

ANALYSIS:

Existing law:

- 1) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)
- 2) Establishes the Occupational Safety and Health Standards Board, within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. (Labor Code §140-147.6)
- 3) Requires employers to establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP) that must include, among other things, a system for identifying and evaluating workplace hazards. (Labor Code §6401.7)
- 4) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid. (Labor Code §6409.1)
- 5) Prohibits a person from discharging or in any manner discriminating against any employee because the employee, among other things, reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), as specified. (Labor Code §6310)
- 6) Prohibits an employee from being laid off or discharged for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. (Labor Code §6311)
- 7) Establishes the Workplace Violence Prevention in Health Care standard, as part of its injury and illness prevention plan, requiring specified health care employers to maintain an effective workplace violence prevention plan,

maintain a violent incident log, and provide effective training to employees to protect health care workers and other facility personnel from aggressive and violent behavior. (Labor Code §6401.8)

- 8) Authorizes an 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, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer. (Code of Civil Procedure §527.8)

This bill:

Temporary Restraining Orders

- 1) Authorizes a collective bargaining representative (in addition to the employer under existing law) of an employee who has suffered unlawful violence or a credible threat of violence from any individual, to seek a temporary restraining order (TRO) and an order after hearing on behalf of the employee or any number of other employees at the workplace.

Workplace Violence Prevention Plan

- 2) Requires every employer, as part of the IIPP required under existing law, to additionally establish, implement, and maintain, at all times in all of the employer's facilities, a workplace violence prevention plan (plan) for purposes of protecting employees and other personnel from aggressive and violent behavior at the workplace.
- 3) Specifies that the workplace violence prevention plan may be incorporated into the IIPP or maintained as a separate document, and shall include, among other things, the following elements:
 - a) Names or job titles of persons responsible for implementing and maintaining the plan.
 - b) Effective procedures to obtain the active involvement of employees and their collective bargaining representatives, if any, in developing, implementing, and reviewing the plan, as specified.

- c) Effective procedures for obtaining assistance from appropriate emergency and law enforcement agencies, as specified, including a policy protecting employees who seek assistance and intervention from such agencies.
 - d) Effective procedures to accept and respond to reports of workplace violence and to prohibit retaliation against an employee who makes such a report.
 - e) Employee communication procedures regarding violence, including communication between shifts and departments, how to report incidents, threats or other violence without reprisal and how they will be investigated.
 - f) Procedures to develop, with input from employees and collective bargaining representatives, and provide specified training.
 - g) Assessment procedures to identify and evaluate environmental risk factors, as specified, including community-based risk factors, as specified.
 - h) Procedures to correct workplace violence hazards in a timely manner and for hazards posing a realistic possibility of death or serious physical harm, within seven days of the discovery, as specified. Corrective measures include, among other things, ensuring sufficient staff is trained and available (with no other duties) and using an alarm system, as specified.
 - i) Procedures for postincident response and investigation, including, among other things, making trauma counseling available and referring affected employees to worker wellness centers, as specified.
 - j) Provisions prohibiting the employer from maintaining policies that require employees to confront active shooters or suspected shoplifters.
- 4) Requires the employer to record information, confidentially as specified, in a violent incident log about every incident, postincident response, and workplace violence injury investigation performed in accordance with these provisions. The bill specifies what information must be included in the violent incident log and requires that the log be reviewed during the annual review of the plan.
- 5) Requires the employer to establish and implement a system to annually review, in conjunction with employees and their bargaining representatives, if any, the effectiveness of the workplace violence prevention plan, as specified. Problems found during the review shall be corrected, as specified, and requires the plan to be updated based on this review and as specified.
- 6) Requires the employer to develop, with input from employees and their representatives, if any, and provide effective training to employees, as specified, that addresses workplace violence risks. Training material must be

appropriate in content and vocabulary to the educational level, literacy, and language of employees.

- 7) Specifies that all employees of the employer shall have all trainings required in person, during work time, at the workplace, and in an atmosphere designed to provide an opportunity for interactive questions and answers.
- 8) Requires that all employees working in the facility, unit, service, or operation be provided all of the following trainings:
 - a) Initial training when the plan is first established and when an employee is newly hired/assigned to duties for which the training was not previously provided. Training must address workplace violence hazards identified and the corrective measures the employer has implemented, as specified.
 - b) Additional training when new equipment or practices are introduced or when a new workplace violence hazard has been identified.
 - c) Training, per (a) above, at least annually thereafter.
- 9) Requires records of workplace violence hazard identification, evaluation, and correction to be created and maintained, as specified, for a minimum of one year and include training dates, contents or summary training sessions, names and qualifications of trainers, and names and job titles of all persons attending.
- 10) Requires records of violent incidents, as specified, to be maintained for a minimum of five years or pursuant to other law, whichever is greater, and to be made available to employees and their collective bargaining representatives, if any, on request, for examination and copying.
- 11) Prohibits an employer from interfering, or taking punitive or retaliatory action against for, in employees seeking assistance and intervention from local emergency services or law enforcement when a violent incident occurs.

Background

As a result of SB 1299 (Padilla, Chapter 842, Statutes of 2014), the Division of Occupational Safety and Health (Cal/OSHA) proposed and the Standards Board adopted a health care industry specific workplace violence prevention standard that requires, among other things, covered employers to maintain a violent incident log, and provide effective training to employees. Cal/OSHA is currently developing a new general industry regulation on Workplace Violence Prevention that will apply

to most workplaces in California. The regulation is currently being drafted based on input from two public meetings and two rounds of written comments.

[NOTE: Please see the Senate Labor, Public Employment and Retirement Committee analysis on this bill for data on workplace violence and more background information on the steps to develop and adopt an occupational safety and health standard.]

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, the Department of Industrial Relations (DIR) indicates that it would incur first-year costs of \$1.64 million, and \$1.58 million annually thereafter, to implement the provisions of the bill (Labor Enforcement and Compliance Fund). Cost drivers would include enforcement, consultation and legal workload.

SUPPORT: (Verified 5/23/23)

United Food and Commercial Workers, Western States Council (source)
American Federation of State County and Municipal Employees
California Alliance for Retired Americans
California Food and Farming Network
California Institute for Rural Studies
California Labor Federation, AFL-CIO
California Nurses Association
California Rural Legal Assistance Foundation
California School Employees Association
California State Council of Service Employees International Union
California State Legislative Board, Sheet Metal, Air, Rail and Transportation
Workers – Transportation Division
California Teachers Association
Central California Environmental Justice Network
Garment Worker Center
ILWU Local 26
Legal Aid At Work
National Union of Healthcare Workers
Nurse Alliance of SEIU California
Pesticide Action Network
Restaurant Opportunity Center United
Roots of Change
San Mateo Labor Council, AFL-CIO
Santa Clara Wage Theft Coalition

TechEquity Collaborative
Warehouse Worker Resource Center
Worksafe

OPPOSITION: (Verified 5/23/23)

Acclamation Insurance Management Services
Allied Managed Care
American Pistachio Growers
Agricultural Council of California
American Council of Engineering Companies, California
Associated General Contractors of California
Associated General Contractors San Diego Chapter
Associated Roofing Contractors
California Apartment Association
California Association of Sheet Metal & Air Conditioning Contractors National
California Association of Winegrape Growers
California Attractions and Parks Association
California Beer and Beverage Distributors
California Builders Alliance
California Building Industry Association
California Business Roundtable
California Chamber of Commerce
California Cotton Ginners and Growers Association
California Craft Brewers Association
California Distributors Association
California Farm Bureau
California Framing Contractors Association
California Fresh Fruit Association
California Grocers Association
California Hispanic Chambers of Commerce
California Hotel & Lodging Association
California Independent Petroleum Association
California Landscape Contractors Association
California League of Food Producers
California Manufacturers & Technology Association
California Pool & Spa Association
California Restaurant Association
California Retailers Association
California State Council of the Society for Human Resource Management
California Travel Association

California Trucking Association
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Far West Equipment Dealers Association
Flasher Barricade Association
Housing Contractors of California
Independent Insurance Agents & Brokers of California, Inc.
National Association of Theater Owners
National Federation of Independent Business
Nisei Farmers League
Official Police Garages of Los Angeles
Plant California Alliance
Residential Contractors Association
Resource Recovery Coalition of California
Western Agricultural Processors Association
Western Electrical Contractors Association
Western Steel Council

ARGUMENTS IN SUPPORT: The sponsors of the measure argue that worker health and safety is an emergency and needs to be treated as such noting that, “Assaults at stores have been increasing at a faster pace than the national average. From 2018 to 2020, assaults reported to the F.B.I. by law enforcement agencies overall rose 42%. There was a 63% increase in grocery stores and 75% in convenience stores.” Regarding the pending standard at Cal/OSHA, they argue, “no progress on this standard has been made since its introduction, and many steps remain before it could take effect. Additional advisory committee meetings will likely take place prior to a final draft, and at some point, a Standardized Regulatory Impact Assessment (SRIA) will almost certainly have to be prepared. SRIAs typically take 1-2 years or more. And, once a final version is submitted to the Occupational Safety and Health Standards Board, about a year is necessary before final passage. The remaining steps are highly likely to consume several additional years or more. Workers, who fear for their lives going to work every single day, do not have years to wait for Cal/OSHA to act and adopt a General Industry Workplace Violence Standard.”

ARGUMENTS IN OPPOSITION: A coalition of employers are opposed arguing that, “SB 553 purports to be an attempt to accelerate the multi-industry regulatory process – but it does not build on the language from the most recent Cal/OSHA draft of the Draft Multi-Industry Standard. Instead, SB 553 copies the provisions of the Healthcare WV Standard, which was designed for a relatively small group of well-resourced, technologically advanced employers.” They argue,

“hospitals simply are not the average employer in California – which is why Cal/OSHA has been working through a regulatory process to modify the standard to make sense for all workplaces in the state – rather than impose a one-size-fits all standard as SB 553 does.” They additionally argue that, “SB 553 will not actually prevent any workplace violence, so there is no urgency to supersede Cal/OSHA’s ongoing work. Substantively, SB 533 does not change the realities around workplace violence – namely, that it is a criminal matter that employers are not well-equipped to prevent.”

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556
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