



WORKSAFE
safety, health, and justice for workers
seguridad, salud y justicia para los trabajadores



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Sent Via Email

Re: Workplace Violence Prevention Standard- General Industry

We would like to extend our appreciation to the Division for the opportunity to provide comments. We appreciate the tremendous amount of work done by all stakeholders and government agencies involved in creating this proposed standard. We are eager to move the process along towards adopting a strong and effective standard that has a broad scope to protect all workers in all industries from workplace violence.

We commend the inclusion of staffing considerations as an engineering control in the standards, recognizing its importance in enhancing workplace safety. By integrating staffing levels into the engineering control measures, the standard acknowledges that adequate staffing is essential for maintaining effective safety protocols and managing risks. Properly staffing the workplace helps ensure that there are enough trained personnel to respond to incidents, maintain safe operations, and implement safety measures efficiently. This proactive approach contributes significantly to preventing incidents and improving overall workplace safety, demonstrating a comprehensive understanding of the interplay between staffing and safety controls.

We are pleased to see that the division has included a requirement for individual trauma therapy in section (c)(11)(C). Traumatic incidents can have a profound impact on an individual's mental well-being and leave emotional scars that are difficult to navigate. Individual trauma therapy plays a pivotal role in providing a safe haven for individuals to unravel and comprehend the complexities of their traumatic experience. Therapy is designed to help individuals manage their symptoms, develop and strengthen coping mechanisms, and work towards healing and recovery. Including a requirement for employees to be offered individual trauma therapy is critical in ensuring that employees impacted by traumatic incidents are able to continue their employment.

In 2022, the California Legislature passed and the Governor signed into law Senate Bill 1044 (Durazo), which prohibits an employer during an emergency condition from taking or threatening adverse action against any employee for refusing to report to or leaving a workplace within an affected area because the employee has reasonable belief that workplace is unsafe. Additionally, the bill prohibits an employer from preventing any employee from accessing their mobile device during an emergency condition. While workers are afforded these protections through State Law it is important for the proposed regulation to reference these protections so workers are made aware of this right during emergency situations.

While we appreciate all of the above, we were disappointed with several elements that were missing from the draft.

In particular, we'd like to express our disappointment with EXCEPTION 6. We understand that EXCEPTION 6 limits the applicability of the standard to workplaces with fewer than 10 employees that are not accessible to the public. While we recognize that altering this exception may not be feasible, we want to emphasize that excluding such small, non-public-facing workplaces from the standard is problematic. Workers in these environments are still susceptible to workplace violence, and their safety should not be compromised due to the size of the organization or public accessibility. Even in smaller, less visible workplaces, the risk of violence remains, and these employees deserve the same protections and preventive measures as those in larger or public-facing settings. Addressing workplace violence comprehensively requires acknowledging and safeguarding all employees, regardless of workplace size or public access.

We believe key changes and additions in the following sections will enhance the preventative measures in the standard: (1) definitions for “workplace violence”, “threat of violence”, “injury”, and “representative”; (2) environmental risk factors and engineering and control measures; and (3) training.

I. Definitions

A. “Workplace Violence” and “Threat of Violence”

This current draft’s definition of “workplace violence” is not broad enough to ensure coverage of all workers. Sexual violence, domestic violence, and stalking are pervasive in all demographics and impact every workplace.¹ Certain workers such as those without a fixed location, at non-traditional worksites, in work-related travel such as employer-provided or arranged transportation and lodging, or who are in work-related situations that might not be considered a “worksite” (i.e. stalking incidents) are left out of the current definition. For example, while “place of employment” is broader than “worksite,” it may still leave out some of the above work situations. See our comments, dated April 28, 2018 for certain types of workplace situations that the current definition may exclude.²

Without a doubt, “stalking” should be included in the definition of workplace violence. Stalking has been identified as the most prevalent form of abuse at work.³ An estimated 15.2% of women have experienced

¹ Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Intimate Partner Violence: Consequences* (Aug. 22, 2017) <<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html>> (as of Dec. 5, 2018); Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *NISVS Infographic* (Apr. 28, 2017) <<https://www.cdc.gov/violenceprevention/nisvs/infographic.html>> (as of Dec. 5, 2018).

² See Worksafe Comments submitted to advisory committee, p.3-4 (April 28, 2018).

³ Reeves & O’Leary-Kelly, *A Study of the Effects of Intimate Partner Violence on the Workplace* (2009) pg. 3.

stalking behavior that made them fearful or made them believe that they or someone close to them would be harmed or killed during their lifetimes.⁴

Therefore, we recommend the following language:

“Workplace violence” means any act of violence or threat of violence that occurs at the place of employment or while using employer supplied or arranged transportation or any threat of violence by a supervisor that occurs at employer supplied lodging. The term workplace violence shall not include lawful acts of self-defense or defense of others. Workplace violence includes the following:

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

(B) An incident involving the threat or use of a firearm or other dangerous weapon, including the use of common objects as weapons, regardless of whether the employee sustains an injury;

(C) Stalking of an employee that results in, or has a likelihood of resulting in material harm to the physical safety and health of such employee when such stalking has arisen through and in the course of employment or occurs at the worksite.

(D) Four workplace violence types:

(1) "Type 1 violence" means workplace violence committed by a person who has no legitimate business at the work site, and includes violent acts by anyone who enters the workplace with the intent to commit a crime.

(2) "Type 2 violence" means workplace violence directed at employees by customers, clients, patients, students, inmates, or visitors.

(3) "Type 3 violence" means workplace violence against an employee by a present or former employee, supervisor, or manager.

(4) "Type 4 violence" means workplace violence committed in the workplace by someone who does not work there, but has or is known to have had a personal relationship with an employee.

This definition needs to be broadened to ensure that *predictors* of violent behavior as well as *specific violent behaviors* are covered, regardless of whether an “injury” as defined in Title 8 results or not. (See discussion below.) A narrow definition might overlook crucial factors and early indicators that contribute to violent behavior, potentially leading to ineffective interventions and prevention strategies. By

⁴ Centers for Disease Control, National Center for Injury Prevention and Control, *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization - National Intimate Partner and Sexual Violence Survey, United States, 2011* (Sep. 5, 2014) Morbidity and Mortality Weekly Report <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e#Table4.> (as of Dec. 5, 2018).

expanding the definition to include predictors of violence, such as stalking, we can better identify and address underlying issues before they manifest as actual violent acts. This is particularly important for the purposes of recordkeeping and flagging predictive violent behavior.

Therefore, we recommend enhancing the current definition of threat of violence with the following language:

“Threat of violence” means any verbal or written statement, including, but not limited to, texts, electronic messages, social media messages, or other online posts, or any behavioral or physical conduct, that conveys an intent, or that is reasonably perceived to convey an intent, to cause physical harm, **psychological trauma, or stress, regardless of whether the employee sustains an injury,** or place someone in fear of physical harm, and that serves no legitimate purpose.

C. Type and form of access to plan and records

In the Workplace Violence Prevention Plan section (c) and the Recordkeeping section (f), representatives are granted access to all records as outlined in subsection (f). However, the specifics regarding the type of access workers and their representatives should have requires further clarification. Clearly defining the type and form of access to the plan for both workers and their representatives will ensure they have essential information about the employer’s plan. This is particularly important for workers who are disempowered or non-unionized.

We recommend adopting the following language to specify the type of access workers and their representatives should have to the plan:

(c) Workplace Violence Prevention Plan. The employer shall establish, implement and maintain an effective workplace violence prevention plan (Plan). The Plan shall be in writing and shall be available to employees and authorized employee representative(s) at all times. **If the employee or their representative agrees to receive the Plan electronically, the employer may provide the record electronically.**

(f)(6) All records required by subsections (f)(1), (f)(2), and (f)(3), shall be made available to employees and authorized employee representatives, upon request and without cost, for examination and copying within 15 calendar days of a request. **If the employee or their representative agrees to receive the record electronically, the employer may provide the record electronically.**

II. Environmental Risk Factors, Engineering and Control Measures & Other Important Measures

A. Plan must include Environmental Risk Factors Assessment

While we appreciate the inclusion of language to generally require procedures to evaluate workplace violence hazards, evaluation of environmental factors such as physical space is also extremely important to an effective WVP plan. As we know, some of the most vulnerable workers, like janitors, often work at night and in isolation. This isolation from co-workers and the public reduces the likelihood that anyone

will intervene or witness assaults against them, and allows harassers to exert even greater control over workers. Lilia Garcia-Brower, when she was Executive Director of the Maintenance Cooperation Trust Fund (MCTF), a California multi-stakeholder janitorial industry watchdog group, stated that “in her experience, as many as three quarters of janitors experience sexual harassment.”⁵ Thus, an employer should be required to identify and evaluate and ultimately implement necessary control measures to eliminate or reduce such environmental risks.

Therefore, we recommend the following language:

(c)(9) Procedures to identify and evaluate workplace violence hazards and environmental risk factors, including scheduled periodic inspections to identify unsafe conditions and work practices; and procedures to evaluate workplace violence hazards identified through periodic inspections, employee concerns, workplace violence incidents, and whenever the employer is made aware of a new or previously unrecognized hazard.

D. Plan must enable workers to report to someone other than their direct supervisor

While we appreciate the requirement for employers to establish procedures for reporting all forms of violence, we are especially concerned about the procedures for addressing "Type 3 violence" under (c)(4), which involves violence perpetrated by supervisors. It is crucial to ensure that procedures are in place for workers to report such incidents to someone other than their direct supervisor. The documentary, PBS-Frontline special *Rape on the Night Shift*, and *Rape in the Fields*, shows the violence experienced by these workers, who are predominantly immigrant women of color, at the hands of supervisors or individuals who present themselves as supervisors.⁶ Moreover, it is well known that in agriculture and janitorial work, many incidents of violence are perpetrated by supervisory employees.

Workers are understandably very uncomfortable about reporting threats and incidents of sexual violence. A zero tolerance policy and a system encouraging reports of concerns to a human resources person or another office employee are much needed administrative controls in these situations. To reduce barriers to reporting we propose this language that tracks the shade provision language in the outdoor heat regulation, under the California Code of Regulations, Title 8 section 3395:

Therefore we recommend the following changes:

(c)(4) Effective procedures for the employer to accept and respond to reports of workplace violence, **in a manner that does not discourage reporting**, including **procedures for reporting all types of violence to a designated person, and procedures for reporting Type 3 violence to a designated person who is not a direct supervisor**, and to prohibit retaliation against an employee who makes such a report

E. Post-Incident Procedures must enable workers to report violent incidents to law enforcement without retaliation

⁵ *Id.*

⁶ Bergman et. al., *Rape in the Fields*, Frontline, Investigative Reporting Program at UC Berkeley, and the Center for Investigative Reporting (May 15, 2012) < <http://www.pbs.org/wgbh/frontline/film/rape-in-the-fields/>> (as of Dec. 5, 2018).

While we are pleased with the inclusion of anti-retaliation language with respect to reporting workplace violence to an employer and law enforcement, we believe workers need to be informed of their right to report workplace violence to law enforcement as part of the Effective Procedures for post-incident response and investigation section (c)(11). This is particularly important to ensure that workers are informed of this right given the real fear of retaliation some workers have when reporting incidents to law enforcement. Workers have reported experiencing intimidation and discouragement from their employer about reporting workplace violence. In some more egregious instances employers have retaliated against workers by calling law enforcement after workers have tried to exercise their health and safety rights.

Thus, it is important to ensure that an affected employee is aware of their right to make a police report about a violent incident and to have a record of the reporting of the incident. Employers should be required to verify that they have given the affected employee a form created by the Division with such information. This will ensure workers are given the necessary information and tools that they need to make a complaint.

Therefore, we recommend the following insertion:

(c)(11) Procedures for post incident response and investigation, including completion of a form created by the Division that explains an employee's right to make a police report about the incident and provides contact information for local law enforcement. A form must be provided to any employee who is a victim of workplace violence. The form must be provided in a language the employee understands or with translation service, including phone translation service if needed to help complete the form. Any worker who files a complaint or suffers an injury should be provided with a copy of the completed incident investigation.

The workplace violence standards should include a requirement for notifying employees when a closure occurs due to a traumatic incident, as part of the post-incident procedures. Such notification is crucial to prevent employees from arriving at a site that has been cordoned off or affected by a crime scene, which could expose them to distressing situations and potential hazards. By implementing a formal communication process to inform workers about closures and the status of the workplace following an incident, organizations can help safeguard employees' mental and physical well-being. This proactive approach ensures that employees are aware of any disruptions, avoiding unnecessary exposure to a potentially traumatic environment and allowing them to make appropriate arrangements during the closure. Such measures not only support employees' safety and mental health but also enhance the overall effectiveness of the post-incident response.

Therefore, we recommend the following insertion:

(c)(11)(I) Employees must be informed when their worksite is closed due to a traumatic incident to prevent them from arriving and being exposed to potentially distressing scenes, such as crime scene tape, damage and destruction, media presence etc..

In the aftermath of shootings, stabbings, bomb threats, or other traumatic incidents, providing employees with time off as a post-incident response is crucial for their recovery and well-being. Such time off allows affected individuals to seek necessary medical attention, including physical and psychological care, without the added stress of workplace obligations. It also provides them with the opportunity to access

counseling services and support systems essential for coping with trauma. By offering paid or protected leave, organizations demonstrate a commitment to employee health and recovery, ensuring that workers have the support needed to address their immediate needs and begin the healing process. This proactive approach not only fosters a supportive work environment but also contributes to overall workplace safety and morale, helping employees return to work when they are truly ready.

Therefore, we recommend the following insertion:

(c)(11)(J) Employers must provide paid time off as a post-incident response for shootings, stabbings, and other traumatic incidents to allow employees to seek necessary medical attention and access counseling or support services.

III. Training

We appreciate the inclusion of training that covers all workers, especially the most vulnerable, such as contingent and temporary employees. However, we remain concerned that the current standard does not mandate interactive training formats. Interactive sessions, whether conducted in-person, via live Zoom meetings, or through options allowing for questions to be submitted with responses provided within three business days, are crucial for effectively presenting information, leading discussions, and responding to questions, which are less effective in a purely webinar format. Additionally, some workers may have difficulties accessing or comprehending webinar-based training.

Therefore, the standard should mandate interactive training methods to ensure optimal learning outcomes. While webinar and e-learning formats, as defined in Title 2 of the California Code of Regulations, section 11024(a)(2), can be included as supplementary tools, they should not replace the core requirement for interactive training.

Therefore we recommend the following language:

(e)Training. The employer shall provide effective **interactive sessions, conducted in-person, via live Zoom meetings, or through options allowing for questions to be submitted with responses provided within three business days,** workplace violence prevention training to a covered worker or supervisor by a qualified trainer as specified in subsections (e)(1) and (e)(2).”

To ensure consistency and continuity in record-keeping practices, it is important that the training records be maintained for five years, aligning with the retention period specified for other records. Currently, the standard for record retention across various categories is set at five years, which provides a uniform framework for data management and compliance. By extending the training records retention period to match this five-year standard, organizations can streamline their record-keeping processes, reduce administrative complexity, and maintain coherence across all documentation. This alignment not only simplifies compliance but also ensures that historical training information is readily accessible for reference, audits, and ongoing assessments, thus supporting a comprehensive approach to workplace safety and regulatory adherence.

Therefore, we recommend the following insertion:

(f)(2) Training records shall be created and maintained for a minimum of ~~one~~ **five years** and include training dates, contents or a summary of the training sessions, names and qualifications of

persons conducting the training, and names and job titles of all persons attending the training sessions..

Finally, as previously noted, it is crucial for workers to be informed about the resources and support available to them in the event of a workplace violence incident. Including this information in the curriculum is essential, as many employees may not be aware of their additional legal rights or the resources they can access in such situations.

Therefore we recommend the following language:

(e)(2): Initial training shall address the workplace violence hazards specific to the employees' jobs, the corrective measures the employer has implemented, an explanation of the employers' Plan, how to seek assistance to prevent or respond to violence, strategies to avoid physical harm, and how to report workplace violence incidents or concerns to the employer without fear of reprisal. How to contact other agencies such as Department of Civil Rights or law enforcement without fear of reprisal. How to contact support publically available resources for victims of violent crimes."

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In closing, we appreciate your efforts in establishing a strong and comprehensive WVP standard for general industry and the opportunity to be a part of this process. Please direct any questions regarding this comment letter to Worksafe's AnaStacia Nicol Wright and UFCW's Jassy Grewal. Thank you for your consideration of these comments.

Sincerely,



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