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# Cal/OSHA Releases Updated Draft of Workplace Violence Prevention in General Industries Standard

By [Andrew J. Sommer](#) and [Samuel S. Rose](#)

In 2014, the California Occupational Safety and Health Standards Board ordered the creation of an Advisory Committee to consider a workplace violence prevention standard for “all California workplaces.” The Division of Occupational Safety and Health (DOSH) – the enforcement agency – was tasked with drafting a proposed rule, which it did in December 2017 and then revised in October 2018. This rulemaking process has since remained dormant largely due to the COVID-19 pandemic reshuffling priorities. 

Then, on May 17, 2022, DOSH released a [revised draft](#) of its proposed Workplace Violence Prevention in All Industries standard (Proposed Rule). This may be a sign the Proposed Rule is coming to a vote by the Standards Board. We have summarized the key components of the Proposed Rule below.

## **WHO DOES THIS STANDARD APPLY TO?**

The Proposed Rule would apply to “all employers,” with limited exception. It does not apply to employers in the health care industry that are already covered by the Violence Prevention in Health Care Standard (§ 3342) and certain law enforcement agencies. Otherwise, the Proposed Rule is not limited by employer size or industry.

## **HOW IS WORKPLACE VIOLENCE DEFINED?**

The definition of “workplace violence” remains largely unchanged in the Proposed Rule. The term means “any act of violence or threat of violence that occurs in a place of employment.” It includes “the threat or use of physical force against any 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." It also includes "an incident involving the threat or use of a firearm or other dangerous weapon...regardless of whether the employee sustains an injury."

Like the Violence Prevention in Health Care Standard, the Proposed Rule addresses four categories of violence:

1. Type 1 Violence: workplace violence committed by a person who has no legitimate business at the worksite, including anyone who enters with the intent to commit a crime
2. Type 2 Violence: workplace violence directed at employees by customers, clients, patients, students, inmates, or visitors
3. Type 3 Violence: workplace violence against an employee by a present or former employee, supervisor, or manager
4. Type 4 Violence: workplace violence committed in the workplace by someone who does not work there, but has/had a personal relationship with an employee

Lawful acts of self-defense or defense of others, and self-inflicted harm are excluded from the definition of workplace violence.

## **WHAT DOES THE STANDARD REQUIRE OF EMPLOYERS?**

### **Workplace Violence Prevention Plan**

The Proposed Rule requires employers to "establish, implement, and maintain an effective workplace violence prevention plan (Plan)." It contains few changes from the October 2018 draft in what elements the Plan would have to include. The elements are the following:

1. Identification of person(s) responsible for implementing the Plan
2. Effective procedures to obtain active involvement of employees and authorized employee representatives (i.e., unions) in developing and implementing the Plan
3. Methods the employer will use to coordinate implementation of the Plan with other employers
4. Effective procedures for accepting and responding to reports of workplace violence, and to prohibit retaliation
5. Procedures to ensure that supervisors and non-supervisors comply with the Plan
6. Procedures to communicate with employees regarding workplace violence matters
7. Procedures to respond to workplace violence emergencies including on how employees will be alerted about a workplace violence emergency, evacuation/shelter plans, and how to obtain help from staff, security, or law enforcement
8. Procedures to develop and provide employee training
9. Procedures to identify workplace violence hazards, including through periodic inspections, employee concerns, prior workplace violence incidents, and new or previously unrecognized hazards
10. Procedures for correcting workplace violence hazards in a timely manner
11. Procedures for post-incident response and investigation
12. Procedures for periodically reviewing the effectiveness of the Plan, including after a workplace violence incident

### **Violent Incident Log**

The Proposed Rule also requires employers to “record information in a violent incident log about every workplace violence incident.” It contains a few changes from the October 2018 draft, mostly removing specific examples of items to be included in the log in favor of more general requirements. The log is required to include:

1. Date, time and location of the incident
2. Workplace violence type(s) from the definition of workplace violence
3. Description of the incident
4. Consequences of the incident, including whether security/law enforcement was contacted, their response, and actions taken to protect employees from a continuing threat or other hazard identified by the incident
5. Name and job title of the person completing the log and the date on which the log entry was completed

### **Training**

The Proposed Rule requires employers to “provide effective training to employees” and to use “training material appropriate in content and vocabulary to the educational level, literacy, and language of employees” This section contains the most significant changes from the October 2018 draft and specifically requires that the training program include:

1. General awareness training on workplace violence including the definitions and requirements under the Proposed Rule
2. Training on the employer’s Plan
3. Instruction on how to obtain a copy of the Plan and participate in developing the Plan
4. Instruction on how to report workplace violence incidents or concerns to the employer

Employers that have a workplace violence incident within the previous 5 years are required to provide additional training on:

1. Workplace violence hazards specific to the employees’ jobs
2. Corrective measures that the employer has implemented
3. How to seek assistance to prevent or respond to violence
4. Strategies to avoid physical harm
5. Violent incident log and how to obtain copies of records required to be maintained by employer

### **Recordkeeping**

Lastly, the Proposed Rule requires employers to maintain the following records:

1. Records of workplace violence hazard identification, evaluation, and correction, which must be maintained for at least one year
2. Training records, which must be maintained for at least one year
3. Violent incident logs, which must be maintained for at least five years
4. Records of workplace violence incident investigations, which must be maintained for at least five years

These records must be made available to the Division upon request and to employees within 15 calendar days of a request.

## **IMPLICATIONS FOR EMPLOYERS**

There is some ambiguity in the Proposed Rule's definition of workplace violence, particularly concerning a threat of force that "has a high likelihood of resulting in...psychological trauma, or stress...." It's unclear how the Proposed Rule might apply where a workplace violence incident results in psychological trauma or stress developing days or months after the incident. It's also unclear whether the employer would have an obligation to follow up with the employee about whether psychological trauma or stress developed.

To illustrate this, suppose a purely verbal altercation occurs in a worksite between two employees. No physical injury is sustained by either employee. Two months later, one of the employees develops signs of stress he attributes to the verbal altercation but never shares this with the employer. Would the employer have an obligation under the Proposed Rule to check in on the employees for any length of time following the verbal altercation and take measures as a result?

Another concern is the Proposed Rule's one-size-fits-all approach by mandating the same workplace violence prevention rules for essentially all employers statewide. This places onerous mandates on workplaces that may have a minimal risk of workplace violence, or at least not of the nature contemplated under the Proposed Rule. A better use of the Standards Board's and the DOSH enforcement agency's resources would be on industries that have a high rate of workplace violence incidents, like was the focus when developing the Violence Prevention in Health Care Standard.

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