

SEPTEMBER 4, 2024 | CAL/OSHA RULEMAKING & STANDARDS

Cal/OSHA's Workplace Violence Prevention Discussion Draft Expands on SB 553 Requirements

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SB 553 mandates that Cal/OSHA propose a workplace violence prevention standard by December 31, 2025, with the Occupational Safety and Health Standards Board required to adopt the standard by December 31, 2026.

Prior to the passage of SB 553, Cal/OSHA published a revised discussion draft of its workplace violence prevention standard in May 2022. More recently, on July 15, 2024, another revised [draft](#) was released. While no advisory committee meeting has been scheduled at this time, it is anticipated that one will be set for later this year.

The key additions in the draft are summarized below, along with some comments regarding potential issues with the additions.

- Examples of "engineering controls" and "work practice controls"
- Examples of "workplace violence hazards"
- Employers must communicate with "authorized employee representatives," as well as employees, regarding how to report incidents, how incidents will be investigated, and the results of workplace violence investigations
- Employers must create and maintain records of workplace violence complaints and keep the identity of reporting employees confidential unless the employee *expressly* requests their identity be shared
 - Potential issue: Historically, employers could only offer limited confidentiality, sharing information on a "need to know" basis. Investigators were unable to guarantee complete confidentiality, as disclosing certain details might be necessary to conduct a thorough investigation and take appropriate action. Additionally, the accused party has the right to be informed of the allegations made against them. This raises the question: Does the strict confidentiality requirement impede the accused party's right to due process?
- Inspections must also be conducted when new substances, processes, and procedures, or equipment are introduced to the workplace that represent a new hazard, rather than just when the Plan is first established, after each workplace violence incident, and whenever the employer is made aware of a new or previously unrecognized hazard

- Employers cannot require or encourage employees to confront persons suspected of committing a criminal act or persons suspected of engaging in workplace violence
 - EXCEPTION: Dedicated security personnel
- Employees can remove themselves from any unsafe condition, when necessary, without fear of reprisal
- Employers must keep a record of correction measures considered or implemented to address workplace violence hazards
 - Potential issue: In certain workplaces, such as retail establishments, workplace violence incidents may occur daily. Introducing an additional recordkeeping requirement for documenting the correction measures considered could place an excessive burden on employers and will likely lead to Cal/OSHA questioning why such measures were not taken
- Specific procedures for post-incident response and investigation, including:
 - Providing immediate medical care or first aid to employees who have been injured in the incident
 - For employers with more than 25 employees, making available individual trauma counseling to employees affected by the incident
 - Identifying all employees involved in the incident (names, and other personal identifiable information **cannot** be included in the written investigation report)
 - Potential issue: The investigation report is not required to be provided to employees upon request. Therefore, the restriction on including personally identifiable information in the report seems unnecessary. If such information cannot be included, will employers be compelled to create yet another separate record containing this information for their records?
 - Conducting a post-incident debriefing as soon as possible after the incident with employees, supervisors, and security involved in the incident
 - Identifying and evaluating any workplace violence hazards that may have contributed to the incident
 - Identifying and evaluating whether appropriate corrective measures developed under the Plan were effectively implemented and if any new or additional corrective measures are recommended
 - Soliciting from employees involved in the incident their opinions regarding the cause of the incident, and whether any measure would have prevented the incident
- For each workplace violence incident, prepare a written investigation report, which must include all the following:
 - Description of how the employer complied with all the above requirements
 - All information the employer received or produced regarding:
 - Identifying and evaluating any workplace violence hazards that may have contributed to the incident
 - Identifying and evaluating whether appropriate corrective measures developed under the Plan were effectively implemented and if any new or additional corrective measures are recommended
 - Soliciting from employees involved in the incident their opinions regarding the cause of the incident, and whether any measure would have prevented the incident
 - Results and recommendations of the incident investigation
 - Potential issue: Again, at some workplaces, there may be workplace violence incidents daily. Requiring all this information in the investigation report would be excessively burdensome.

Many of the additions in the new draft raise more questions than they answer. CMC is developing an organization-anonymous coalition of employers and trade groups to work on the workplace violence prevention rulemaking. See below for more information about that along with our other rulemaking coalitions. Also, please contact [Rachel Conn](#), [Megan Shaked](#), or [Andrea O. Chavez](#) for more information.

Join Conn Maciel Carey's Cal/OSHA Rulemaking Coalition

Although we are a little more than halfway through 2024, the Cal/OSHA Standards Board has already had a jam-packed year. To date, the Board has adopted an Indoor Heat Illness Prevention standard and revisions to the Lead regulations. The Board has also indicated that a slew of new standards and revisions to existing regulations are on the horizon, including:

- "Enterprise-wide" and "egregious" citation classifications for General Industry.
- Workplace Violence Prevention Standard for General Industry (draft recently released).
- Permanent Infectious Disease Standard for General Industry.
- Updates to the Aerosol Transmissible Diseases Standard in Healthcare.
- Cal/OSHA adoption of the fed/OSHA Worker Walkaround Rule.

Because of the numerous regulatory actions the Cal/OSHA Standards Board is planning, **CMC's Cal/OSHA Practice is organizing a flat fee-based, company-anonymous coalition of employers and trade groups to advocate for the most reasonable outcomes across numerous Cal/OSHA rulemakings** throughout the remainder of the year, and renewed annually thereafter.

Check out the article on CMC's [Cal/OSHA Defense Report Blog](#) for more information about CMC's Cal/OSHA Rulemaking Coalition.

If your organization is interested in participating, please contact [Rachel Conn](#), Chair of CMC's California Practice. Also, let us know if you have any questions or if you would like to have a call to talk through our plans and strategy for this annual rulemaking coalition, the fee for participating, and the various value-add benefits of participating with our group.

In addition, CMC is hosting a [Cal/OSHA and California Employment Law Summit](#) on October 8th and 10th where we will cover these developments in detail. See below for more information and to register.



Conn Maciel Carey LLP's [Cal/OSHA and California Employment Law Summit](#) is an in-person program presented by the California-based attorneys in CMC's national [OSHA • Workplace Safety](#) and [Labor • Employment](#) Practice Groups, to provide updates about the workplace safety and health regulatory landscape in California, as well as important developments in employment and labor law affecting California employers.

Two Dates and Locations to Choose From

Registrants have the opportunity to join the program in Northern California on October 8th, or in Southern California on October 10th. Continental breakfast, lunch, and program materials will be included with registration at both locations. **Tickets are \$150 per person.**

See the [agenda](#) below and [visit our site](#) for more information and to register.

