AUGUST 11, 2023 | LEGISLATIVE & STANDARDS BOARD UPDATES

California Workplace Violence Prevention Legislative Update

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Five years after releasing the first draft, and multiple public comment periods later, Cal/OSHA's regulation on Workplace Violence Prevention in General Industry (WPV Standard) finally appears to be nearing the last stages of the rulemaking process.

In a surprising move, the California Legislature is now also close to potentially passing its own, more expansive, Workplace Violence Prevention Bill (SB 553).

Currently, the Cal/OSHA draft requires employers to:

1. Establish, implement, and maintain an effective workplace violence prevention plan;
2. Record information about every workplace violence incident in violent incident log;
3. Provide training to employees on general awareness and, under some circumstances, training on specific workplace violence hazards; and
4. Maintain training records for one year and violent incident logs for five years, among other various recordkeeping requirements.

SB 553 was introduced earlier this year, despite the years of work from Cal/OSHA and stakeholders. This move by the Legislature appears to be spurred by frustration with the speed of the Cal/OSHA rulemaking process as well as a desire to require more extensive requirements that mirror the current Violence Prevention in Health Care Standard (8 CCR 3342). It also includes retail-specific provisions on shoplifter training and a prohibition on requiring workers who are not dedicated safety personnel from confronting suspected active shoplifters.

Recently, additional amendments have been circulating that would break SB 533 into two sections– "General Industry" and "High Violence Industries." The "General Industry" section would track closer to the Cal/OSHA draft standard. The "High Violence" section would include certain retail establishments and would keep the more onerous parts of SB 553's present text, with additional modifications.

In addition to the impact of retail being subject to the more onerous statute, there is also potential impact from an overall designation of being a "High Violence" workplace:

- Potential Increase in Worker's Compensation Serious & Willful Petitions– The "High Violence" label may lead to additional findings of employer knowledge of a "dangerous condition" which is necessary for a successful

S&W petition.

- Potential Increase in Union Organizing & Negotiation Leverage– The designation will likely be used by unions in organizing efforts and used as leverage during bargaining negotiations.
- Hazard Pay– Additional legislation or ordinances may be introduced to compensate employees for work done in "High Violence" workplaces.
- Increased Cal/OSHA Inspections & Citations– Cal/OSHA will likely create special emphasis programs (SEPs) to target industries in "High Violence" industries. The designation will also likely increase complaints made to the agency as well as internal complaints. Increased inspection activity will likely also lead to increased citation issuance.
- Difficulties in Retention & Recruiting– The stigma that a workplace is considered "High Violence" will likely also affect retailers' abilities to retain and recruit employees.