



Workplace Violence Prevention Rules are Coming for California Employers – One Way or Another!

Insights

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A grim reality in the wake of recent tragedies is that employers have a heightened interest in developing strategies to minimize workplace violence and related legal risks. For California employers, that heightened interest may be accelerated by proposed regulatory and legislative requirements that are currently under discussion. Indeed, workplace violence prevention is shaping up to be one of the hottest issues of the year for California employers — and you're likely to face new obligations and responsibilities in this area, perhaps by later this year. Here's what you need to know about Cal/OSHA developments and pending legislation in the state.

What's Brewing?

For several years, the Division of Occupational Safety and Health (Cal/OSHA) has been developing a workplace violence prevention standard applicable to general industry that may be finalized soon. But a pending legislative proposal could sidestep all of that and mandate far-reaching workplace violence prevention requirements.

Moreover, recent enforcement activity by Cal/OSHA indicates a willingness to cite employers for workplace violence incidents even under the agency's existing authority — and in the absence of a specific regulation applicable to employers beyond the healthcare industry. Read on to learn how these developments could impact your workplace.

Legislative Proposal Would Mandate Workplace Violence Prevention

How lawmakers ended up stepping in to pass workplace safety legislation is a drawn-out affair spanning a number of years, but here's a quick overview.

Agency Standard Being Proposed

For a number of years now, existing Cal/OSHA regulations have required certain healthcare employers to adopt specific procedures to prevent workplace violence. This standard was adopted after a number of high-profile incidents involving employees at healthcare facilities, including state hospitals.

Approximately six years ago, the Cal/OSHA Standards Board formed an advisory committee and began the task of considering a workplace violence prevention standard that would apply to all industries – not just healthcare.

The Standards Board process has been delayed a few times, first by an emergency regulation addressing wildfire smoke and then by several years of dealing with the all-consuming COVID-19 crisis. But the process appears to be back on track.

Last year, the Standards Board released a revised discussion draft of a standard. It indicated that an updated draft will be released shortly for further discussion and that it is close to moving forward with formal rulemaking.

Notably, the current draft that would apply to general industry is different from the existing standard applicable to healthcare facilities. This is an important acknowledgement that not all employers have the resources or face the same potential workplace violence challenges as healthcare employers.

Not Moving Quickly Enough For Some

However, both the pace and the scope of the pending rulemaking have not been good enough for labor groups and worker advocates. They have complained about both the delay in bringing up the proposal for a vote (five to six years) and raised concerns about the direction the discussion draft of the standard appears to be headed.

Consequently, labor groups back legislation that was introduced this year – Senate Bill 553 – to short circuit the regulatory process and enact statutory requirements applicable to all employers.

Summary of Proposed Legislation

In short, SB 553 takes the workplace violence standard for healthcare employers and largely applies it to all employers in the state (and in some ways goes further). The proposed law would require, among other things, all employers to adopt a Workplace Violence Prevention Program (WVPP) that includes the following:

- Effective procedures for the employer to accept and respond to reports of workplace violence.
- Assessment procedures to identify and evaluate risk factors for every facility, department, or operation, and surrounding areas.
- Procedures to correct workplace violence hazards in a timely manner. Engineering and work practice controls must be used to eliminate or minimize identified hazards to the extent feasible.
- Procedures for post-incident response and investigation.
- Provision prohibiting the employer from maintaining policies that require employees who are not “dedicated safety personnel” to confront active shooters or suspected shooters.

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SB 553 would also require employers to record information on each incident in a log, and the bill contains significant other recordkeeping and training requirements.

Employer Groups Raise Concerns

A number of employer groups, led by the California Chamber of Commerce, have expressed opposition to the proposed law and have been actively advocating against the bill.

Primarily, they argue that SB 553 ignores the years of work by Cal/OSHA experts on a new workplace violence standard that would apply across industries. They write that the bill would “short-circuit an ongoing regulatory process for unclear reasons and require even the smallest public and private employers to meet infeasible standards that were never intended for most industries.”

Employer groups also assert that the proposed rule is not tailored to known workplace violence risks in specific industries or workplaces. They note that the bill will require training, recordkeeping, annual reviews, and additional full-time staff to “prevent and respond to workplace violence events during each shift.”

Opponents also state that these costs will be significant for small businesses and large entities alike, which is why Cal/OSHA is developing a standard that can be applied to all workplaces. Employer groups acknowledge that workplace violence is an important topic but is one that must be addressed correctly.

Cal/OSHA Takes Enforcement Action Under Existing Authority

Despite the absence of a specific standard addressing workplace violence, Cal/OSHA has taken aggressive action against employers in light of recent workplace tragedies.

For example, Cal/OSHA recently issued citations against two Half Moon Bay employers following an incident in January where a former employee allegedly shot and killed seven co-workers at two different mushroom farms.

One of the employers was cited for “failure to have a plan or procedures to immediately notify employees of an active shooter and instruct them to seek shelter.” The other employer was cited for failure to address previous incidents of workplace violence and develop procedures to correct and prevent such a hazard.

This recent enforcement activity demonstrates the willingness of Cal/OSHA to cite an employer for workplace violence incidents under its existing authority. Specifically, the agency can use the Injury and Illness Prevention Program rule as a catch-all standard when a more specific safety order does not apply.

If Cal/OSHA can cite general employers for violations related to workplace violence under its existing authority, it begs the question as to why a general industry regulatory standard or SB 553 is necessary at all. While that is a very logical question, employers should still prepare for the proposed standard or SB 553 to move forward. Despite recent enforcement activity, worker advocates are likely to continue to push for a specific mandate applicable to general industries and for Cal/OSHA to have stronger and more direct authority to regulate workplace conduct and cite employers.

What's Next?

For now, all eyes are on SB 553. As discussed above, employer groups are vigorously opposing the legislation, conveying that the bill's requirements are unworkable and the proposal undermines the work and authority of the Standards Board. Ultimately, this bill may pass the legislature and the outcome may depend on whether it is signed or vetoed by Governor Newsom. We likely won't know until mid-October. But even if the bill is vetoed, the Standards Board is likely to continue to move forward with its proposal and may be close to final action.

Therefore, one way or another, it is likely that California employers will be required to comply with specific workplace violence prevention requirements in the near future. The time to plan and prepare is now.

Conclusion

We are continuing to monitor these developments and will provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in any one of [our six California offices](#).

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