

Will California be the First State to Issue Workplace Violence Rules' Probably, yes.

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The California Division of Occupational Safety and Health (Cal/OSHA) held an advisory meeting in January to solicit input and comments on their proposed draft rules for workplace violence prevention that would apply to nearly all California employers. Passage of these standards would make California the first state to issue workplace violence rules which would surpass federal protections. Cal/OSHA is [soliciting comments](#) through March 30, 2018, so California employers should act now to help shape the future of these standards.

What are the current rules governing workplace violence? – Currently, Federal OSHA relies on its General Duty Clause, established by Section 5(a)(1) of the Occupational Safety and Health Act of 1970, to cite employers for hazards that involve workplace violence. The [General Duty Clause](#) requires employers to provide a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious harm.” Courts have interpreted this to mean that employers have a legal obligation to provide a workplace free of conditions or activities that are recognized as hazardous when there is a feasible method to abate the hazard.

In October 2016, Cal/OSHA unanimously adopted a workplace violence prevention standard for health care workers, becoming the first state to implement regulations of this kind. As of April 1, 2017, the health care workplace violence standard has required health care employers to implement a violent incident log and maintain certain records of workplace violence incidents and training. After [April 1, 2018](#), health care employers must also implement a workplace violence prevention plan, an annual review of the workplace violence prevention plan, and effective training that addresses workplace violence risks.

But this standard only applies to healthcare employers, and currently there are no specific regulations regarding workplace violence in other industries. Cal/OSHA currently requires non health care employers to use the provisions in [Section 3203](#), Injury and Illness Prevention Program (IIPP), to address violence in the workplace. However, the IIPP is a basic written workplace safety program, and the requirements do not specifically discuss workplace violence.

What is being proposed? – The current [draft proposal](#) would require covered employers to (1) develop an effective workplace violence prevention plan, (2) provide all employees with workplace violence training, and (3) maintain records of workplace violence hazard identification, evaluation, correction, training and investigations. “Workplace violence” is currently defined as “any act of violence or threat of violence that occurs at the work site” not including “lawful acts of self-defense or defense of others.” Under the draft proposal, the standards would apply to all employers with the exception of certain law enforcement agencies, and health care employers already regulated under the healthcare violence standard.

What are the proposed requirements for a workplace violence prevention plan? – Employers would be required to establish, implement, and maintain a written workplace violence prevention

plan, and make it available to employees at all times. The plan would need to include the following elements:

1. Persons responsible for implementing the plan
2. Procedures to obtain involvement of employees and representatives in developing, implementing, and reviewing the plan
3. Methods the employer will use to coordinate implementation of the plan with other employers, where applicable
4. Procedures for accepting and responding to reports of workplace violence, and prohibiting retaliation against employees
5. Procedures to ensure employees comply with the plan
6. Procedures to communicate with employees regarding workplace violence matters without fear of reprisal
7. Procedures to develop and provide the training
8. Procedures to identify and evaluate workplace violence hazards
9. Procedures to correct workplace violence hazards in a timely manner, including emergency procedures
10. Procedures for post-injury response and investigation

What training requirements are proposed? – Employers would be required to provide effective training that addresses the workplace violence risks that employees are reasonably anticipated to encounter in their jobs. All employees would need to be provided with initial training when the workplace violence prevention plan is first established or when an employee is newly hired or newly assigned to additional duties. Initial training would need to address the workplace violence hazards identified at the workplace, the corrective measures the employer has implemented, an explanation of the employer’s workplace violence prevention 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.

What are the proposed recordkeeping requirements? – Employers would need to maintain records of workplace violence hazard identification, evaluation, and correction, as well as training records, for one year. Additionally, employers would be required to keep records of workplace violence injury investigations for five years.

What is the timeline for the draft rules? – The proposal is still in the pre-rulemaking stage. There have been two advisory meetings, on January 12, 2017 and January 25, 2018, at the Harris State Building in Oakland. During the time between the advisory meetings, Cal/OSHA fielded comments and drafted the proposed industry-wide workplace violence standards. Cal/OSHA is currently soliciting comments on the draft language for the new regulation through March 30, 2018. The comments will likely be addressed in another advisory meeting to be scheduled within the next year. This pre-rulemaking stage can take several years, with the rule-making stage taking another

year. As a comparison, the healthcare standard took about two years to draft and implement, but it was accelerated by legislative mandate.

What can California employers do now? – California employers have the opportunity to shape these standards by taking part in the comment period through March 30, 2018 and attending upcoming advisory meetings. Given that the advisory committee has discussed the possibility of carving out specific industries instead of proceeding with a general standard, employers may want to comment on why these standards are ill-suited for their specific industry.