

SB 553:

Cal-OSHA's new workplace violence prevention plan requirement

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INTRODUCTIONS:

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WHAT WE WILL COVER TODAY:

- Nuts and bolts of SB553
- Requirements of SB553
- Workplace Violence Incident Log
- Training Employees
- Case Study

WHAT DOES SB553 REQUIRE?

- SB553 was recently passed in California and requires that most employers (there are some narrow exceptions) create and implement a workplace violence prevention plan.
- SB553 takes effect on July 1, 2024, but Cal-OSHA is already making the rounds and gauging the temperature on how ready employers in the state are.
- Very similar to Cal-OSHA healthcare facility workplace violence prevention plan requirements.
 - Cal-OSHA aggressively enforces this.
 - Think patients attacking nurses, etc.

WHY SB553?

- According to the Occupational Safety and Health Administration (OSHA), workplace violence is the second leading cause of fatal occupational injuries in the United States, affecting nearly 2 million American workers annually.
- SB 553 addresses workplace violence by requiring California employers to implement basic protections to protect employees while at work.

CAL — OSHA TEMPLATE PLAN

<https://www.dir.ca.gov/dosh/Workplace-Violence/General-Industry.html>

WHAT THE PLAN SHOULD INCLUDE:

- Prohibiting employee retaliation.
- Accepting and responding to reports of workplace violence.
- Employee workplace violence training and communication.
- Emergency response.
- Workplace violence hazard assessments.
- Maintaining a Violent Incident Log.

WHO DOES NOT HAVE TO COMPLY WITH SB553 REQUIREMENTS?

- Prison facilities.
- Law enforcement.
- Health care facilities
- Teleworkers – if the location is not under the control of the employer.
- Less than 10 employees and the workplace is NOT accessible to the public.
 - Most business are accessible to the public via deliveries, client visits, etc.

IMPORTANT CONCEPTS

Engineering Controls

Part of the built space or device in workplace that removes barriers between the worker and the hazard. Does not require human management.

Examples: door at a bank or bullet proof glass.

Work Practice Controls

More on the human side of things – procedures and rules targeted to reduce workplace violence hazards.

Examples: not buzzing people in; conflict resolution policies.

Violent Incident Log Tips

300 log on steroids!

Requires a significant amount of information such as the type of violence (we will discuss in depth shortly), who was involved, etc.

IMPORTANT CONCEPTS CONTINUED....

Workplace Violence

Any act of violence or threat of violence that occurs in a place of employment.

Threat of Violence Defined

The threat or use of physical force that results in injury, psychiatric trauma, or stress.

Does NOT require actual physical interaction. Can be verbal or written – social media threats.

NOTE: Online posts will be challenging for employers to deal with. Some cases will be clear cut threats while others will be wobblers. A robust plan will help with this.

TYPES OF VIOLENCE (COMES INTO PLAY RE: LOG)

Type 1 – Workplace violence by a person who has no legitimate business at the workplace. A true third party criminal act.

Type 2 – Violence by clients, patients, visitors, etc. – violence by someone visiting the business.

Type 3 – Employee on employee violence – both current and former; the most common type of workplace violence.

Type 4 – Violence by a person who does not work there but has a personal relationship with someone who does, For example, an irate boyfriend/girlfriend. Someone who has no right to be in the workplace.

THE PLAN ITSELF — MUST BE ESTABLISHED, IMPLANTED AND MAINTAINED.

The plans are not one size fits all—no one template to copy for all businesses — they must be customized. And that includes customization for departments within companies.

Production facilities will have very different plans than a company comprised of office cubicles.

This plan cannot just be located in a binder and on a shelf.

Plan must evolve and be continuously updated.

If there are new hazards at new locations — the employer must update the plan.

The plan must be in writing and not only available, but also easily accessible to employees, the union, and Cal-OSHA.

Some employers choose to place the plan online for employee accessibility.

Important aspect of why needs to be readily accessible to employees is because the plan contains detailed instruction regarding how to report a threat of violence

Cal-OSHA can (and will) show up at any time and request the plan. They will issue a citation if the plan is not accessible.

California employers with robust Injury & Illness Prevention Programs can incorporate the workplace violence prevention plan into it or have it as a stand-alone document.

- Best practice currently to have stand alone workplace prevention plan.

DESIGNATED PERSON — CHOOSE WISELY

- Written plan must have name or job title of person responsible for implementing the plan (similar to COVID plan in this regard).
- Need to make clear who employees are to go to with questions.
- If person not designated in the plan, Cal-OSHA will issue on the spot citation. Be sure to update if this person leaves the organization.

INVOLVE EMPLOYEES

- Must have effective procedures to involve employees in the plan. They need to be involved in identifying, evaluating, and correcting workplace violence.
- Monthly or quarterly safety meetings-workplace violence may be new topic.
- What if there are multiple employers on site?
 - Plan must have method of coordination for implementing the plan amongst all employers so everyone is clear on their role and complies accordingly.

MULTI-EMPLOYER WORKSITES

Need to include how to report workplace violence.

Should be a topic at safety meetings.

Needs to be clearly mapped out among employers and everyone act accordingly.

Temp agencies – another area that will have to be more clearly defined.

How the employer accepts or responds to reports of workplace violence or hazards is critical and must be incorporated into the plan.

- This includes procedures in place to report, submit, provide and communicate reports of workplace violence.

No retaliation – plan must state that nobody will be retaliated against for reporting workplace violence.

- Redundant but important.

Workplace rules and discipline will necessarily have to touch on the plan – update handbooks/manuals accordingly.

Requirements around identifying and evaluating workplace violence hazards similar to IIPP language.

- Requires periodic inspections:
 - Walk through's.
 - Daily, weekly, monthly inspections specifically for workplace violence.
 - Example: truck drivers delivering products – must identify hazards related to working and delivering in dangerous location.
 - This is a critical part of the plan.
 - Cal-OSHA known to make document demand on employer requesting all documents that identify, evaluate and discuss workplace violence hazards. Employer must be able to produce such documents or face citation – be prepared.

Plan also must contain procedures to correct such identified hazards.

- You've identified the hazards, now what is the plan to correct them?
- This must be included in the plan and updated regularly.

PROCEDURES TO REVIEW THE EFFECTIVENESS OF YOUR PLAN AND REVISE IT ACCORDINGLY.

Plan is not static — must update!

Plan must constantly be evolving. Not the case that plan is drafted once and left alone.

If plan not updated on some regular basis, face risk of citations for non-compliance.

When should I update?

It's a good idea to update the plan annually, when any deficiencies are observed, and after a workplace violence incident.

This will assist you in being up to date and in compliance.

What if I'm not sure?

Best practice here is to update.

BUT THESE REQUIREMENTS ARE SO BURDENSOME....

Yes, they are. But they are necessary. Remember:

- Compliance is going to be custom.
- A small corner bodega's plan will be vastly different from a large luxury department store.
- Every plan and focus needs to be highly customized.
- Specific task, risk, hazards and the employees encountering the hazards.
- Convenience store in a high crime area? Address that risk.
- Remote locations or site? Address those risks.
 - Example: Electric company employees that encounter armed persons in remote areas — address the risk.
 - Train employees to address the risks they face related to workplace violence.
 - BROAD CORE PRINCIPLES BUT CUSTOMIZATION TO EACH COMPANY.
 - You know your business better than anyone—better equipped than anyone to draft and implement plan.

SUSPECTED ENFORCEMENT TACTICS

Request for written plan.

Inspector will ask for written plan.

Failure to produce same immediately could range from small to serious if incident occurred and there was no plan.

Cal-OSHA will say there was no plan and this led to someone being hospitalized.

OSHA 300 Logs and Record Keeping

Must maintain violent incident log.

General or easy citation will be issued if log not maintained and turned over immediately.

Maintaining Records

Maintain these records up to 5 years.

Designated person to pull the violent incident log asap upon Cal-OSHA request.

WORKPLACE VIOLENCE PLAN TRAINING

Cal-OSHA line of questioning here will mimic a heat illness inspection.

They will ask individual:

- Do you know about your company's workplace violence prevention plan?
- Have you been trained on the plan?
- Do you understand the signs of workplace violence?
- Who are you supposed to report workplace violence to?
- Even though SB553 not in effect until July 1, 2024, we are already seeing inspections for it.
- If there is news coverage of a workplace violence incident or you have to report a serious injury or fatality – expect a visit from Cal-OSHA.

SB553 VIOLENT INCIDENT LOG BREAKDOWN

300 Log on Steroids

A lot of leg work required to fill this log out as required.

Incredibly robust log.

Date/time/location of incident.

Detailed description of the incident:

- What led to incident?
- Who was involved in incident?
- Include every detail and document it.
- Who committed the violence?

The log is a lot like a police report.

Classification of Circumstances

Was the employee(s) doing their usual job?

Were they in a poorly lit area?

Were they rushed?

Was there understaffing?

Was the employee alone or in an isolated location?

Where did the incident occur?

Type of Incident

Already required to designate as Type 1, 2, 3, or 4.

This adds factors: physical without a weapon, biting, hair pulling, scratching, threat of physical force, animal attack.

What was the response to the incident? Was the police department called? Was any other action taken by the employer?

Be careful of admissions trap here:

Who completing the log? Name, title, and date completed.

Any persons completing log could be deposed later – choose carefully who designated to do this.

TRAINING

A great plan that sits on a shelf and that employees are not trained on is useless.

Employees must be trained to comply with the plan.

Employees must understand what they are supposed to do regarding workplace violence.

Employees must know who to report workplace violence to – VERY IMPORTANT.

The training has to be effective. Cannot ask employees to review a document and sign for receipt – that won't fly.

SB553 requires that the training be appropriate in content relative to the employees – how the training is worded and delivered.

- Example: Meat processing employees trained in Spanish and English.

CASE STUDY: MUSHROOM FARM SHOOTING

- Mushroom farm in Half Moon Bay, CA.
- January 2023 – Employee committed mass shooting in the workplace.
- 7 people killed – one person critically injured.
- Employer cited for more than \$165,000 in fines.
- Farm cited for failure to have plan in place to notify employees of active shooter situation and advise them to take shelter.
- 2nd time employee in the workplace there attempted to kill another employee.
- Citations issued for the following: Failure to address proper workplace violence, failure to develop plan to prevent violence in the future, lack of training for Spanish and Mandarin speaking workers.



QUESTIONS?