

Legal Alert

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California Approves First-In-The-Nation Regulation Specifically Addressing the Threat of Workplace Violence in Healthcare Facilities

Recently, the California Division of Occupational Safety & Health Standards Board approved a [new safety standard](#) designed to provide comprehensive regulatory protections for workers exposed to workplace violence in healthcare settings. The standard, which was sponsored by several labor unions, will require covered healthcare providers to develop workplace violence prevention plans, training programs, and recordkeeping procedures to track certain incidents of workplace violence.

According to the most recent data from the Bureau of Labor Statistics, workers in health care and social assistance were involved in 52% of workplace violence incidents in 2014, and unions and other advocates for healthcare providers have long pushed for greater protections to address what they perceived as a persistent and growing problem. As a result, the new standard's definition of "workplace violence" is sweeping, and covers "any act of violence or threat of violence that occurs at the work site" regardless of whether it results in employee injury. It includes (a) all threats or use of physical force against an employee that results in, or is highly likely to result in injury, stress, or psychological trauma; (b) incidents involving the threat or use of a firearm or other dangerous weapon; and (c) four distinct "types" of workplace violence defined by reference to the identity of the perpetrator, specifically:

- 1 Someone with "no legitimate business" at the facility;
- 2 A person who is the beneficiary of the services provided;
- 3 A current or past employee; or
- 4 Someone who "has a personal relationship with an employee."

The new rule's requirements apply to virtually every type of private healthcare facility in California, including hospitals and other inpatient facilities in which patients are admitted for a twenty-four hour stay or longer, outpatient facilities, home healthcare facilities, paramedic and emergency medical services, healthcare field operations, and drug treatment programs, among others. Once the standard is in effect, all covered employers will be obligated to establish and implement a written workplace violence prevention plan that addresses the hazards and corrective measures for each unit, service, or operation and that includes eleven specific elements:

- The names or job titles of the persons responsible for implementing the plan;
- Effective procedures to obtain the active involvement of employees and their representatives—specifically including security personnel or their representatives—in developing and implementing the plan;
- The methods the employer will use to coordinate implementation of the plan with other on-site employers whose employees work in the facility;



- A policy prohibiting retaliation against employees who seek law enforcement assistance when a violent incident occurs;
- Procedures to ensure that employees comply with the plan;
- Procedures to report and communicate with employees regarding workplace violence matters;
- Procedures to develop and provide the workplace violence training required by the standard;
- Assessment procedures to identify and evaluate environmental risk factors, which must include a review of all workplace violence incidents that occurred within the previous year, whether or not an injury occurred;
- Procedures to identify and evaluate patient-specific risk factors and to assess risks posed by visitors;
- Procedures to correct workplace violence hazards in a timely manner; and
- Procedures to respond and investigate incidents of workplace violence after they have occurred.

Under the standard, employers must also update the written plan annually, provide employees (including temporary employees) with detailed workplace violence prevention training, and maintain a detailed log of each covered violent incident, as well as the post-incident response and investigation. General acute care hospitals, acute psychiatric hospitals, and special hospitals must also report to Cal/OSHA within 24 hours incidents resulting in injury, that involve the use of a firearm or other dangerous weapon, or that present an urgent or emergent threat to the welfare, health or safety of hospital personnel. All other incidents of violence must be reported to Cal/OSHA within 72 hours.

Complying with the new rule's requirements is expected to be costly, time-consuming, and pose a number of logistical challenges, particularly the development of a written plan that includes each of the eleven required elements. For example, the rule requires employee participation in preparing the written plan, but does not address what happens if employees refuse or are reluctant to get involved. The employee participation requirement specifically obligates employers to involve security personnel, without any exception for employers who do not have security personnel or whose security services are provided by third-parties—raising concerns that the participation of non-employees could create a joint employer relationship between such third parties and the covered employer.

Furthermore, the requirement that employers include assessment procedures to identify environmental risk factors in their written plans is incredibly broad. The standard contains a list of examples of environmental risk factors that employers must consider, which includes “furnishings or any objects” that can be used as a weapon, “poor illumination or blocked visibility or where employees or possible assailants may be present,” and areas where an “assailant could prevent entry into the work area by responders or other employees.” The lack of clarity or limiting principle with respect to each factor—for example, virtually any “furnishing” or “object” could be used as a weapon in the wrong hands—suggests that employers will need to be truly exhaustive in identifying each potential risk to minimize the chances of being perceived as non-compliant.

Finally, the requirement that employers allow employees and their representatives to participate in developing the employer's written violence prevention plan and the required training will almost certainly be used by organized labor as an additional point of entry into



non-unionized workplaces. Other standards, such as Cal/OSHA's hazard communication standard, define "representative" to include only recognized collective bargaining agents or other third-parties to whom employees have given written authorization to act on their behalf. The fact that the word "representative" is not defined at all in the new workplace violence standard raises the prospect that employers will be required to accommodate the involvement of third-parties with only tenuous connections, if any, to covered workplaces and impacted employees. This requirement may also result in increased tensions as unions seek to expand the scope of their workplace involvement and influence on employer policies outside of the collective bargaining process in which such matters are typically negotiated.

The standard is currently under review by California's Office of Administrative Law and it is anticipated that it will easily receive final approval. Once approved, the new rule is likely to go into effect in January 2017 at the earliest. Given the rule's extensive requirements, potentially covered healthcare employers should consult legal counsel and begin the process of preparing to comply as soon as possible.

