

DECEMBER 12, 2016

Cal/OSHA Adopts First in the Nation Standard on Workplace Violence Prevention for Healthcare Employers

BY JENNIFER MORA, THOMAS BENJAMIN HUGGETT AND CHRISTINA CILA

National [research](#) indicates that health care workers are at a substantially higher risk of workplace violence than the average worker in another industry. According to the federal Occupational Safety and Health Administration (OSHA), from 2002 to 2013, the rate of serious workplace violence incidents (those requiring days off for an injured worker to recuperate) was more than four times greater in healthcare than in private industry on average.¹ Patients are the largest source of violence in healthcare settings, followed by visitors or co-workers, and surveys show that many incidents go unreported.

On October 21, 2016, the California Occupational Safety and Health Standards Board (Standards Board) unanimously passed a new General Industry Safety Order entitled “Workplace Violence Prevention in Health Care” (Standard).² The Office of Administrative Law approved the Standard on December 8, 2016. The Standard is codified at Section 3342 of Title 8 of the California Code of Regulations.

Coverage

Although Senate Bill 1299 only required a standard for hospitals, the Standards Board went further and the standard applies to any “health facility,” which is defined very broadly to mean “any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, or treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and

¹ See https://www.osha.gov/dsg/hospitals/workplace_violence.html.

² In September 2014, California enacted Senate Bill 1299, which amended the state’s Labor Code to require Cal/OSHA to promulgate standards mandating hospitals adopt a workplace violence prevention plan as part of its Injury and Illness Prevention Plan (IIPP). Senate Bill 1299 also provided that before January 1, 2017, and annually thereafter, Cal/OSHA must post on its website certain information regarding violent incidents at hospitals. The Standards Board began working on the new Standard, published a proposed rule, and then held a public hearing on December 17, 2015.

after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer.”³

The Standard also applies to home health care and home-based hospices, emergency medical services and medical transports, drug treatment programs and outpatient medical services to those incarcerated in correctional and detention settings. The Standard will not apply to certain state-run health facilities.

The Standard Broadly Defines “Workplace Violence”

“Workplace violence” means any act of violence or threat of violence that occurs at the work site. The term workplace violence shall not include lawful acts of self-defense or defense of others. Workplace violence includes the following:

1. The threat or use of physical force against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury;
2. An incident involving the threat or use of a firearm or other dangerous weapon, including the use of common objects as weapons, regardless of whether the employee sustains an injury;
3. Four workplace violence types:
 - “Type 1 violence” means workplace violence committed by a person who has no legitimate business at the work site, and includes violent acts by anyone who enters the workplace with the intent to commit a crime.
 - “Type 2 violence” means workplace violence directed at employees by customers, clients, patients, students, inmates, or visitors or other individuals accompanying a patient.
 - “Type 3 violence” means workplace violence against an employee by a present or former employee, supervisor, or manager.
 - “Type 4 violence” means workplace violence committed in the workplace by someone who does not work there, but has or is known to have had a personal relationship with an employee.

Workplace Violence Prevention Plan

Healthcare employers covered by the Standard are now required to establish, implement and maintain an effective workplace violence prevention plan (Plan), which must be in effect at all times and in every unit, service or operation. The Plan must be in writing, be specific to the hazards and corrective measures for the unit, service, or operation, and be available to employees at all times. The written Plan may be incorporated into the employer’s written IIPP or maintained as a separate document.

The Plan must include the following:

- Names or job titles of the persons responsible for implementing the Plan;
- Effective procedures to obtain the active involvement of employees and their representatives in developing, implementing, and reviewing the Plan, including their participation in identifying, evaluating, and correcting workplace violence hazards, designing and implementing training, and reporting and investigating workplace violence incidents;

³ Included are facilities with the following bed classifications, as established by the California Department of Public Health: (1) General acute care hospital; (2) Acute psychiatric hospital; (3) Skilled nursing facility; (4) Intermediate care facility; (5) Intermediate care facility/developmentally disabled [re]habilitative; (6) Special hospital; (7) Intermediate care facility/developmentally disabled; (8) Intermediate care facility/developmentally disabled-nursing; (9) Congregate living health facility; (10) Correctional treatment center; (11) Nursing facility; (12) Intermediate care facility/developmentally disabled-continuous nursing (ICF/DD-CN); (13) Hospice facility.

- Methods the employer will use to coordinate implementation of the Plan with other employers whose employees work in the same health care facility, service, or operation, to ensure that those employers and employees understand their respective roles as provided in the Plan;
- Effective procedures for obtaining assistance from the appropriate law enforcement agency during all work shifts;
- Effective procedures for the employer to accept and respond to reports of workplace violence and to prohibit retaliation against an employee who makes such a report;
- Procedures to ensure that supervisory and non-supervisory employees comply with the Plan;
- Procedures to communicate with employees regarding workplace violence matters;
- Procedures to develop and provide training to employees that addresses workplace violence risks employees are reasonably anticipated to encounter on the job;
- Assessment procedures to identify and evaluate environmental and community-based risk factors for each facility, unit, service, or operation, which shall include a review of all workplace violence incidents that occurred in the facility, service, or operation within the previous year, whether or not an injury occurred;
- Procedures to identify and evaluate patient-specific risk factors and assess visitors or other persons who are not employees;
- Procedures to correct workplace violence hazards in a timely manner; and
- Procedures for post-incident response and investigation.

The Standard describes in great detail the procedures that must be addressed within each of these topics.

At least annually, the employer is required to review the effectiveness of the Plan and correct any problems. The annual review must include employees and their representatives and address the employees' respective work areas, services and operations. The Standard sets out numerous additional items the employer must consider when reviewing the Plan, including, among other things, staffing, sufficiency of security systems and job design and equipment.

Violent Incident Log

Healthcare employers will be required to record in a "violent incident log" every incident, post-incident response, and workplace violence injury investigation with descriptive details. The employer must review the log as part of its annual review of the Plan.

The log must contain, at a minimum, the following items:

- The date, time, specific location, and department of the incident;
- A detailed description of the incident;
- A classification of who committed the violence;
- A classification of circumstances at the time of the incident;
- A classification of where the incident occurred;
- The type of incident;
- The consequences of the incident; and
- Contact and other information about the person completing the log.

As with the Plan, the Standard describes in the detail the specific information that must be included for each item.

Training

The Standard requires healthcare employers to provide training to employees designed to address the workplace violence risks that employees are reasonably anticipated to encounter in their jobs. The employer must have an effective procedure for obtaining the active involvement of employees and their representatives in developing training curricula and training materials, participating in training sessions, and reviewing and revising the training program.

The Standard requires that training be conducted at various times, including:

- when the Plan is first established and when an employee is newly hired or newly assigned to perform duties for which the training was not previously provided;
- when new equipment or work practices are introduced; and
- when a new or previously unrecognized workplace violence hazard has been identified.

The Standard requires the initial training to address the workplace violence hazards identified in the facility, unit, service or operation, and the corrective measures the employer has implemented. The initial training also must include:

- An explanation of the employer's Plan, including the employer's hazard identification and evaluation procedures, general and personal safety measures the employer has implemented, how the employee may communicate concerns about workplace violence without fear of reprisal, how the employer will address workplace violence incidents, and how the employee can participate in reviewing and revising the Plan;
- How to recognize the potential for violence, factors contributing to the escalation of violence and how to counteract them, and when and how to seek assistance to prevent or respond to violence;
- Strategies to avoid physical harm;
- How to recognize alerts, alarms, or other warnings about emergency conditions such as mass casualty threats and how to use identified escape routes or locations for sheltering, as applicable;
- The role of private security personnel, if any;
- How to report violent incidents to law enforcement;
- Any resources available to employees for coping with incidents of violence, including, but not limited to, critical incident stress debriefing or employee assistance programs; and
- An opportunity for interactive questions and answers with a person knowledgeable about the employer's workplace violence prevention plan.

Annual refresher training also is required for employees performing patient contact activities as well as their supervisors.

In addition, employees assigned to respond to alarms or other notifications of violent incidents or whose assignments involve confronting or controlling persons exhibiting aggressive or violent behavior must be provided training on numerous topics prior to initial assignment and at least annually thereafter, including strategies to prevent physical harm, aggression violence predicting factors and characteristics of aggressive and violent patients and victims.

Reporting Requirements for Certain Hospitals

In addition to the above requirements, the Standard requires general acute care hospitals, acute psychiatric hospitals, and special hospitals to report to Cal/OSHA any incident involving either of the following:

- The use of physical force against an employee by a patient or a person accompanying a patient that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury (as that term is defined in Cal/OSHA's regulations requiring the reporting of other types of injuries or illnesses).
- An incident involving the use of a firearm or other dangerous weapon, regardless of whether an employee sustains an injury.

All reports must be made within 72 hours, except that the report must be made within 24 hours if the incident:

- results in a fatality or an injury that requires inpatient hospitalization for at least 24 hours for other than medial observation or in which an employee suffers a loss of a limb or suffers any serious degree of permanent disfigurement;
- involves the use of a firearm or other dangerous weapon; or
- presents an urgent or emergent threat to the welfare, health, or safety of hospital personnel, which means that hospital personnel are exposed to a realistic possibility of death or serious physical harm.

The Standard describes the information that must be included in the report. Cal/OSHA will implement an online system for employers to report the information. These reports do not relieve the healthcare employer from making reports that may be required by other Cal/OSHA regulations. Employers can expect that these reports will result in a significant number of new non-formal and on-site inspections.

Recordkeeping

The Standard will require healthcare employers to maintain various records, including records of workplace violence hazard identification, evaluation, and correction, training records, and records of violent incidents. Records must be made available to employees and their representatives, as well as Cal/OSHA, upon request.

Next Steps for Employers

The Standard is effective on April 1, 2017, which means that California healthcare employers have less than four months to get in full compliance with these onerous requirements. Cal/OSHA's Standard is a first of its kind at the federal and state level, although Federal OSHA is proceeding with a rulemaking and will hold a public hearing on January 10, 2017.

At a minimum, employers covered by the Standard should immediately consider:

- Gathering records of all incidents of workplace violence (with or without injury) from the previous year;
- Reviewing all existing policies, programs, and training addressing elements of workplace violence prevention;
- Conducting the required assessments for each workplace;
- Drafting and implementing a new written Workplace Violence Prevention Plan, which addresses the numerous topics enumerated in the Standard;
- Creating training programs for all employees that effectively advise of any workplace violence risks that may arise in a healthcare environment and in the employees' particular work area; and
- Establishing a record retention program for training and any incident that could be viewed as an incident of workplace violence, even if no injury resulted.

Employers should also review the significant privacy issues raised by the Standard, and with the advice of privacy attorneys, develop an appropriate policy addressing concerns which may arise in keeping records, reporting incidents to Cal-OSHA, and handling inspections of this Standard.

Littler will keep employers apprised of future developments with respect to the Standard and the development of programs thereunder.