

Workplace Violence Prevention in General Industry – Draft
Draft revisions July 15, 2024 compared to California Labor Code 6401.9

§3343. Workplace Violence Prevention.

(a) Scope and Application. ~~Except as provided in paragraph (2),~~ This section applies to all employers, employees, places of employment, and employer-provided housing.

(1) ~~Subject to paragraph (3), the following employers, employees, and places of employment~~ The following are exempt from this section:

EXCEPTION 1: Healthcare facilities, service categories, and operations covered by ~~Ssection 3342 of title 8 of the California Code of Regulations.~~

EXCEPTION 2: Employers that comply with, ~~Ssection 3342 of Title 8 of the California Code of Regulations.~~

EXCEPTION 3: Facilities operated by the Department of Corrections and Rehabilitation, if the facilities are in compliance with ~~Ssection 3203 of Title 8 of the California Code of Regulations.~~

EXCEPTION 4: Employers that are law enforcement agencies that are a “department or participating department,” as defined in Section 1001 of Title 11 of the California Code of Regulations and that have received confirmation of compliance with the Commission on Peace Officer Standards and Training (POST) Program from the POST Executive Director in accordance with Section 1010 of Title 11 of the California Code of Regulations. This exception only applies to facilities in compliance with section 3203. ~~However, an employer shall be exempt pursuant to this subparagraph only if all facilities operated by the agency are in compliance with Section 3203 of Title 8 of the California Code of Regulations.~~

EXCEPTION 5: Employees teleworking from a location of the employee's choice, which is not under the control of the employer.

EXCEPTION 6: Places of employment where there are less than 10 employees working at the place ~~at any given time~~ and that are not accessible to the public, if the places are in compliance with ~~Ssection 3203 of Title 8 of the California Code of Regulations.~~

~~(3) Notwithstanding paragraph (1), the division may, by issuance of an order to take special action, require an employer that is exempt pursuant to paragraph (1) to comply with this section or require an employer to include employees or places of employment that are exempt pursuant to paragraph (1) in their compliance with this section.~~

- (2) The Division may require exempt employers to comply with this section through the issuance of an Order to Take Special Action.

(b) Definitions. ~~For purposes of this section, the following definitions apply:~~

- (1) “Emergency” means unanticipated circumstances that can be life-threatening or pose a risk of significant injuries to employees or other persons, requiring immediate action.
- (2) “Engineering controls” means an aspect of the built space or a device that removes a hazard from the workplace or creates a barrier between the worker and the hazard. For purposes of reducing workplace violence hazards, engineering controls include, but are not limited to: electronic or mechanical access controls to employee occupied areas; weapon detectors (installed or handheld); enclosed workstations with shatter-resistant glass; deep service counters; spaces configured to optimize employee access to exits, escape routes, and alarms; separate rooms or areas for high risk persons; locks on doors; furniture affixed to the floor; opaque glass (protects privacy, but allows employees to see where potential risks are); improving lighting in dark areas, sight-aids, improving visibility, and removing sight barriers; video monitoring and recording; and personal and workplace alarms.
- (3) “Log” means the violent incident log required by this section.
- (4) “Plan” means the workplace violence prevention plan required by this section.
- (5) “Threat of violence” means any verbal or written statement, including, but not limited to, texts, electronic messages, social media messages, or other online posts, or any behavioral or physical conduct, that conveys an intent, or that is reasonably perceived to convey an intent, to cause physical harm or place someone in fear of physical harm, and that serves no legitimate purpose.
- (6) “Workplace violence” means any act of violence or threat of violence that occurs in a place of employment. Workplace violence includes, but is not limited to, the following:
 - (A) 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.
 - (B) An incident involving a 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.
 - (C) ~~The following~~ Four workplace violence types:

1. "Type 1 violence", ~~which~~ means workplace violence committed by a person who has no legitimate business at the worksite, and includes violent acts by anyone who enters the workplace or approaches workers with the intent to commit a crime.
2. "Type 2 violence", ~~which~~ means workplace violence directed at employees by customers, clients, patients, students, inmates, or visitors.
3. "Type 3 violence", ~~which~~ means workplace violence against an employee by a present or former employee, supervisor, or manager.
4. "Type 4 violence", ~~which~~ means workplace violence committed in the workplace by a person who does not work there, but has or is known to have had a personal relationship with an employee.

EXCEPTION: The term ~~W~~workplace violence does not include lawful acts of self-defense or defense of others.

- (7) "Work practice controls" means procedures, ~~and~~ rules, and staffing which are used to effectively reduce workplace violence hazards. Work practice controls include, but are not limited to: appropriate staffing levels; provision of dedicated security personnel; an effective means to alert employees of the presence, location, and nature of a security threat; control of visitor entry; methods and procedures to prevent unauthorized firearms and weapons in the workplace; employee training on workplace violence prevention methods; and employee training on procedures to follow in the event of a workplace violence incident or emergency.

(c) Workplace Violence Prevention Plan. An employer shall establish, implement, and maintain an effective workplace violence prevention plan (Plan). The ~~P~~plan shall be in writing and shall be available and easily accessible to employees, authorized employee representatives, and to representatives of the ~~d~~Division at all times. The ~~P~~plan shall be in effect at all times and in all work areas and be specific to the hazards and corrective measures for each work area and operation. The written ~~P~~plan may be incorporated as a stand-alone section in the written ~~I~~njury and ~~I~~llness ~~P~~revention ~~P~~rogram required by ~~S~~section 3203 ~~of Title 8 of the California Code of Regulations~~ or maintained as a separate document. The ~~P~~plan shall include all of the following:

- (1) Names or job titles of the persons responsible for implementing the ~~p~~Plan. If there are multiple persons responsible for the ~~p~~Plan, their roles shall be clearly described.
- (2) Effective procedures to obtain the active involvement of employees and authorized employee representatives in developing and implementing the ~~p~~Plan, including, but not limited to, through their participation in identifying, evaluating, and correcting

workplace violence hazards, in designing and implementing training, and in reporting and investigating workplace violence incidents.

- (3) Methods the employer will use to coordinate implementation of the pPlan with other employers, when applicable, to ensure that those employers and employees understand their respective roles, as provided in the pPlan. These methods shall ensure that all employees are provided the training required by subdivision (e) and shall ensure that workplace violence incidents involving any employee are reported, investigated, and recorded.
- (4) 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.
- (5) Effective procedures to ensure that supervisory and nonsupervisory employees comply with the pPlan ~~in a manner consistent with paragraph (2) of subdivision (a) of Section 3203 of Title 8 of the California Code of Regulations~~ in accordance with section 3203(a)(2).
- (6) Effective procedures to communicate with employees and authorized employee representatives regarding workplace violence matters, including, but not limited to, both of the following:
 - (A) How an employee or authorized employee representative can report a violent incident, threat, or other workplace violence concern to the employer or law enforcement without fear of reprisal. Employers shall accept, keep a record of, and consider such reports, including anonymous reports. Employers shall keep the identity of reporting employees confidential unless the employee expressly requests their identity be shared.
 - (B) How employee and authorized employee representative concerns will be investigated as part of the employer's responsibility in complying with subsection (c)(9) subparagraph (I), and how employees and authorized employee representatives will be informed of the results of the investigation and any corrective actions to be taken as part of the employer's responsibility in complying with subsection (c)(10) subparagraph (J). The employer shall keep a record of investigations into employee and authorized employee concerns.
- (7) Effective procedures to respond to actual or potential workplace violence emergencies, including, but not limited to, all of the following:
 - (A) Effective means to alert employees of the presence, location, and nature of workplace violence emergencies;

- (B) Evacuation or sheltering plans that are appropriate and feasible for the worksite; and
 - (C) How to obtain help from staff assigned to respond to workplace violence emergencies, if any, security personnel, if any, and law enforcement.
- (8) Procedures to develop and provide the training required in ~~subdivision~~ subsection (e).
- (9) Effective Procedures to identify and evaluate workplace violence hazards, including, but not limited to, scheduled periodic inspections to identify unsafe conditions and work practices, and employee and authorized employee representative reports and concerns. Inspections shall be conducted: when the pPlan is first established, after each workplace violence incident, when new substances, processes, and procedures, or equipment are introduced to the workplace that represent a new hazard, and whenever the employer is made aware of a new or previously unrecognized hazard.
- (A) Workplace violence hazards shall include, but are not limited to:
1. Employees working alone or in locations isolated from other employees;
 2. Areas with poor illumination or blocked visibility (e.g. blind spots) of surrounding areas;
 3. Entries to places of employment where unauthorized access can occur;
 4. Work locations, areas, or operations that lack effective escape routes;
 5. Presence of money or valuable goods;
 6. Frequent or regular contact with the public;
 7. Working late at night or early morning;
 8. Selling, distributing, or providing alcohol, marijuana, or pharmaceutical drugs; and
- (B) The employer shall maintain records of scheduled and periodic inspections.
- (10) Effective procedures to correct workplace violence hazards identified and evaluated in subsection (c)(9) subparagraph (4) in a timely manner in accordance with section 3203(a)(6) consistent with paragraph (6) of subdivision (a) of Section 3203 of Title 8 of the California Code of Regulations

- (A) Engineering and work practice controls appropriate for the workplace shall be implemented to eliminate or minimize employee exposure to identified workplace violence hazards.
- (B) Employers shall not require or encourage employees to confront persons suspected of committing a criminal act or persons suspected of engaging in workplace violence.

EXCEPTION: Subsection (c)(10)(B) does not apply to dedicated security personnel.

- (C) Employers shall allow employees to remove themselves from any unsafe condition when necessary, without fear of reprisal.
 - (D) Employers shall keep a record of correction measures considered or implemented to address workplace violence hazards.
- (11) Effective Procedures for post-incident response and investigation including:
- (A) Providing immediate medical care or first aid to employees who have been injured in the incident;
 - (B) Identifying all employees involved in the incident (names, and other personal identifiable information as described in subsection (d)(1) shall not be included in the written investigation report);
 - (C) For employers with more than 25 employees, making available individual trauma counseling to employees affected by the incident;
 - (D) Conducting a post-incident debriefing as soon as possible after the incident with employees, supervisors, and security involved in the incident;
 - (E) Identifying and evaluating any workplace violence hazards that may have contributed to the incident;
 - (F) Identifying and evaluating whether appropriate corrective measures developed under the Plan were effectively implemented and if any new or additional corrective measures are recommended pursuant to subsection (c)(10); and
 - (G) Soliciting from employees involved in the incident their opinions regarding the cause of the incident, and whether any measure would have prevented the incident.
 - (H) For each workplace violence incident, prepare a written investigation report, which shall include all of the following:

1. Description of how the employer complied with subsections (c)(11)(A) through (c)(11)(G).
2. All information the employer received or produced regarding subsections (c)(11)(E) through (c)(11)(G).
3. Results and recommendations of the incident investigation.

(12) Effective procedures to review the effectiveness of the Plan and revise the Plan as needed, including, but not limited to, procedures to obtain the active involvement of employees and authorized employee representatives in reviewing the Plan. The Plan shall be reviewed at least annually, when a deficiency is observed or becomes apparent, and after a workplace incident.

(d) Violent Incident Log. The employer shall record information in a violent incident log (Log) for every workplace violence incident.

- (1) Information that is recorded in the Log for each incident shall be based on information solicited from the employees who experienced the workplace violence, on witness statements, and on investigation findings. The employer shall omit any element of personal identifying information sufficient to allow identification of any person involved in a violent incident, such as the person's name, address, electronic mail address, telephone number, social security number, or other information that, alone or in combination with other publicly available information, reveals the person's identity. The Log shall be reviewed during the periodic reviews of the Plan required in subsection (c)(12)subparagraph (L) of paragraph (2) of subdivision (c).
- (2) For purposes of this section, at a multiemployer worksite, the employer or employers whose employees experienced the workplace violence incident shall record the information in a violent incident log pursuant to subsection (d) subparagraph (A) and shall also provide a copy of that log to the controlling employer.
- (3) The information recorded in the log shall include all of the following:
 - (A) The date, time, and location of the incident.
 - (B) The workplace violence type or types, as defined in subsection (b)(6)(C)described in clause (iii) of subparagraph (B) of paragraph (6) of subdivision (a), involved in the incident.
 - (C) A detailed description of the incident.

- (D) A classification of who committed the violence, including whether the perpetrator was a client or customer, family or friend of a client or customer, stranger with criminal intent, coworker, supervisor or manager, partner or spouse, parent or relative, or other perpetrator.
- (E) A classification of circumstances at the time of the incident, including, but not limited to, whether the employee was completing usual job duties, working in poorly lit areas, rushed, working during a low staffing level, isolated or alone, unable to get help or assistance, working in a community setting, ~~or~~ working in an unfamiliar or new location, or other circumstances.
- (F) A classification of where the incident occurred, ~~such as~~ in the workplace, parking lot or other area outside the workplace, or other area.
- (G) The type of incident, including, but not limited to, whether it involved any of the following:
1. Physical attack without a weapon, including, but not limited to, biting, choking, grabbing, hair pulling, kicking, punching, slapping, pushing, pulling, scratching, or spitting.
 2. Attack with a weapon or object, including, but not limited to, a firearm, knife, or other object.
 3. Threat of physical force or threat of the use of a weapon or other object.
 4. Sexual assault or threat, including, but not limited to, rape, attempted rape, physical display, or unwanted verbal or physical sexual contact.
 5. Animal attack.
 6. Other.
- (H) Consequences of the incident, including, but not limited to:
1. Whether security or law enforcement was contacted and their response.
 2. Actions taken to protect employees from a continuing threat or from any other hazards identified as a result of the incident.
- (I) Information about the person completing the log, including their name, job title, and the date completed.

(e) Training. The employer shall provide effective training to employees, as specified in subsections (e)(1) and (e)(2) ~~paragraphs (2) and (3)~~. Training material appropriate in content and vocabulary to the educational level, literacy, and language of employees shall be used.

- (1) The employer shall provide employees with initial training when the Plan is first established, and annually thereafter, on all of the following:
 - (A) The employer's Plan, how to obtain a copy of the employer's Plan at no cost, and how to participate in development and implementation of the employer's Plan.
 - (B) The definitions and requirements of this section.
 - (C) How to report workplace violence incidents or concerns to the employer or law enforcement without fear of reprisal.
 - (D) Workplace violence hazards specific to the employees' jobs, the corrective measures the employer has implemented, how to seek assistance to prevent or respond to violence, and strategies to avoid physical harm.
 - (E) The violent incident log required by ~~subdivision~~ subsection (d) and how to obtain copies of records required by subsections (f)(1), (f)(2), and (f)(3) ~~paragraphs (1) to (3), inclusive, of subdivision (f)~~.
 - (F) An opportunity for interactive questions and answers with a person knowledgeable about the employer's workplace violence prevention plan.
- (2) Additional training shall be provided when a new or previously unrecognized workplace violence hazard has been identified and when changes are made to the Plan. The additional training may be limited to addressing the new workplace violence hazard or changes to the Plan.

(f) Recordkeeping.

- (1) Records of workplace violence hazard identification, evaluation, and correction shall be created and maintained for a minimum of five years.
- (2) Training records shall be created and maintained for a minimum of one year and include training dates, contents or a summary of the training sessions, names and qualifications of persons conducting the training, and names and job titles of all persons attending the training sessions.

- (3) Violent incident logs required by ~~subdivision~~ subsection (d) shall be maintained for a minimum of five years.

- (4) Records of workplace violence incident investigations conducted pursuant to subsection (c)(11) ~~subparagraph (k) of paragraph (2) of subdivision (c)~~ shall be maintained for a minimum of five years. These records shall not contain "medical information," as defined by Civil Code Section 56.05(j) ~~in subdivision (j) of Section 56.05 of the Civil Code~~.

- (5) All records required by ~~this subdivision~~ subsection (f) shall be made available to the Division upon request for examination and copying.

- (6) All records required by subsections (f)(1), (f)(2), and (f)(3) ~~paragraphs (1) to (3), inclusive~~, shall be made available to employees and their authorized employee representatives, upon request and without cost, for examination and copying within 15 calendar days of a request.