Cal/OSHA Advisory Meeting
Workplace Violence Prevention in General Industry
Thursday, January 25, 2018
Oakland, CA

Welcome: Juliann Sum, Chief, Cal/OSHA
Meeting Chairs: Kevin Graulich, Grace Delizo, Amalia Neidhardt, Eric Berg, Willie Nguyen
Notes: Chris Kirkham, Patricia Coyle

MEETING ATTENDEES

NAME	AFFILIATION
Matt Antonucci	Contract Services Administration Trust Fund (CSATF)
Dave Beal	Bickmore
Navnit Bhandal	SEIU State Council
Gail Blanchard-Saiger	California Hospital Association (CHA)
Brenda Briseno	Swinerton
Jamie Carlile	Southern California Edison
Adam Carlson	Workplace Training Network
Trina Caton	Keenan & Associates
Rachel Conn	Nixon Peabody LLP
Jim Dunnegan	Varian Medical Systems
Kristie Elton	University of California Office of the President
Shanna Everts	CalTrans
Marti Fisher	California Chamber of Commerce
Steve Frew	East Bay Municipal Utility District (EBMUD)
Maleah Hall	Petitioner
Michael Hall	Pacific Maritime Association
Gretchen Higgins	CalTrans
Katherine Hughes	SEIU Nurse Alliance of California
David Jones	Association of General Contractors of California
Paul Jordan	NBC Universal
Craig Kappe	Metro Ports
Anne Katten	California Rural Legal Assistance Foundation (CRLAF)
Dan Leacox	Leacox and Associates
Bryan Little	California Farm Bureau
Chris Maddox	NBC Universal
Nicole Marquez	Worksafe
Maritza Martin	Nixon Peabody LLP
Alberto Mejia	SEIU Local 1021
Ken Moses	Workplace Training Network
Chris Moulton	Contract Services Administration Trust Fund (CSATF)
Michael Musser	California Teachers Association (CTA)
Robert Nakamura	member of the public

Amber Novey	Laborers' International Union of North America (LIUNA) Tri-Funds
Perry Poff	Robert D. Peterson Law Corporation
Alka Ramchandani	Jackson Lewis P.C.
Cindy Sato	Construction Employers' Association (CEA)
Ken Smith	University of California Environmental Health and Safety
Jeff Tanenbaum	Nixon Peabody LLP
Jane Thomason	California Nurses Association/National Nurses United
Kevin Thompson	Cal-OSHA Reporter
Elizabeth Treanor	Phylmar Regulatory Roundtable
Marie Walcek	California Nurses Association
Jay Weir	AT&T
Bruce Wick	California Professional Association of Specialty Contractors (CALPASC)
David Woodard	East Bay Municipal Utility District (EBMUD)

Below are detailed notes of the advisory meeting. These notes do not represent a transcript of the meeting, and are simply a summary of the notes taken by the people conducting the meeting. Although every effort has been made to accurately reflect the opinions expressed in the meeting, they should not be considered to be a verbatim record of the proceeding.

Kevin Graulich, Senior Safety Engineer, Cal/OSHA. Welcome everyone and thank you for coming. My name is Kevin Graulich and I am chairing this meeting along with my co-chair Grace Delizo, Senior Safety Engineer, Juliann Sum, Chief of Cal/OSHA, Willie Nguyen, Cal/OSHA Legal Counsel, Eric Berg, Deputy Chief, Amalia Neidhardt, Senior Engineer, and note takers Chris Kirkham and Patricia Coyle.

Juliann Sum, Chief, Cal/OSHA. Welcome participants and thank you for coming. We want to make sure that this process considers all comments. We are in the pre-rulemaking stage, gathering information and input, and putting out a draft document for discussion purposes. We want to develop a protective, but also practical and realistic standard. We need your input and would like to brainstorm together what will work for California. We're at the free-flowing discussion stage of the process. When we get to the formal rulemaking stage, things are more limited. We want to get the regulation as close as possible to the final so that when we get to formal rulemaking its smooth sailing. Please feel free to email us if you have follow-up comments. We are accessible to you all.

Amalia Neidhardt, Senior Safety Engineer, Cal/OSHA. As mentioned previously, we are looking for your input but we are also looking for specific information on cost. So if your institution is already conducting training, or using some type of system to address workplace violence, please share your cost information with us.

Kevin Graulich. This is the second meeting on workplace violence in general industry. At the first meeting, we focused broadly on the scope of who would be impacted by the regulation. Minutes from that meeting are available on our website. All the handouts for today's meeting are posted on our webpage and include today's agenda, a comparison table, the 3343 discussion draft, proposed new language for 3343(e)(3), and the steps to developing a standard.

Eric Berg, **Deputy Chief, Cal/OSHA**. I'm going to briefly go over the handout that compares the three standards: 3203 Injury and Illness Prevention Program; 3342, the recent violence prevention in healthcare standard; and the proposed draft for general industry, 3343. What is required in the new

draft is a subset of what is required in 3342. Nothing in this draft regulation exceeds what is in 3342. One of our goals was for employers who have establishments covered by 3342 and 3343 not to have to change anything. There will be no new requirements. They could use the exact same program that they have for their non-3342 establishments. The proposed standard is similar in structure to 3203 because it works well.

Juliann Sum. Does anyone have any overall comments of what the draft language covers relative to the other two standards? Are there areas that are inappropriate or areas that are missing?

Jeffrey Tanenbaum, **Nixon Peabody**. The concept of making sure that an employer doesn't have to comply with both standards makes perfect sense, however, the language that was used doesn't quite accomplish that. You're referring here to *all employers* except the *facilities* covered by 3342. There are going to be employers working in facilities covered by 3342 and that needs to be addressed so they don't end up having to comply with both.

Eric Berg. As I was saying previously, if you had to comply with both standards, you wouldn't have to change anything. For example, if you had a facility covered by 3342 and another facility down the street that's not covered by 3342 but is covered by 3343, you could just extend your existing Plan to the other facility.

Jeffrey Tanenbaum, if that's what you're trying to accomplish, that's not going to be particularly helpful because 3342 is so much more detailed and covers so many more things than 3343.

Eric Berg. It would be up to the employer whether they extended the 3342 Plan to the other facility. They would not have to. They could switch to 3343, which is much simpler.

Jeffrey Tanenbaum. The issue of employers working in 3342-covered facilities does need to be addressed so they know what they have to do. I will submit suggested language to address the issue.

Nicole Marquez, **Worksafe.** Thank you Juliann and staff for embarking on this rulemaking process but I have concerns that key provisions in the workplace violence in healthcare standard, 3342, are missing from this standard. I would like to make sure that workers and their representatives are involved in the development of the Plan and training, and that there are requirements on who can be a trainer on workplace violence. Key components in terms of the Plan are missing including engineering and work practice controls, and other key terms need to be defined or amended. We look forward to submitting comments as well as providing input today.

Kevin Graulich. We are going to discuss the scope and application now. The regulation will apply to all employers except those listed in the exceptions (Kevin then reviewed the exceptions and asked for comments on the scope).

Bruce Wick, CalPasc. Covering all employers is a concern. At the first meeting, there were representatives from the six high-risk industries. These industries do need a regulation because they have demonstrated exposures, but I am concerned that the regulation covers all employers without a demonstration of need beyond those six. There is a balance problem. If we have a regulation that applies to all employers and yet gets to the levels of providing security, we're going to come apart at the seams saying every small employer has to comply with something that larger employers need - that detail and level of concern. We're going to create something that's unworkable on one side of that or

the other. The construction industry rarely has workplace violence issues. For years we've used the Cal/OSHA Workplace Violence (WPV) sample Plan. Either focus on the six high-risk industries and leave everyone else out, or create something that says it can be part of your 3203 plan. It can be done very simply for smaller employers. Trying to keep it simple enough for all sizes and types of industries, we're going to create too many problems trying to make a regulation for the people it needs to be effective for.

Juliann Sum. If you think low-risk industries should have something simple, is this proposal already too specific for you?

Bruce Wick. Yes, for your average small employer, it will be one more thing you'll be cited for. People who give input to those employers are not going to be able to say we've demonstrated that there's a real need for you to do this, but you can now be cited. We need balance.

Juliann Sum. So maybe a theme to discuss today is which elements of the proposal are too specific for some employers and not specific enough for others. Our thinking on current draft language was that it was broad enough that it wouldn't be burdensome.

Perry Poff, **Robert D. Peterson Law Corporation.** Even 3203 has exceptions for small employers. Perhaps there should be exceptions for some requirements for small employers.

Michael Musser, California Teachers Association. I understand the potential burden on small employers, but I am also concerned that workers are being injured, not by an accident, but by workplace violence. We need to make sure that the workplace violence regulation protects workers, but at the same time make sure that it is not such a burden for the employer that maybe it won't be enforced. Enforcement is key. We can make all the regulations we want but if they're not enforced by the employer then what did we do? I understand the sensitivity to the employer size issue, but hope through this process we can make a good template for all employers regardless of their size.

Eric Berg. Workplace violence is the second leading cause of workplace fatalities in the nation. Its spread among many industries, not just the six we discussed at the last meeting, which is why we have a more broad-based approach.

Nicole Marquez. The types of violence are not limited to those in the regulation. They include stalking, domestic violence that seeps over into the workplace. Even in industries that have a low incidence of workplace violence, employers should still be required to have some bare minimum requirements that I don't see here in the current draft. This is a good start but it needs improvement.

Bruce Wick. The whole issue is compliance. Are we creating safer workplaces for our workers? From experience training employers, when it makes sense to employers, they'll do it. In construction, we have a low exposure. So if we do a few things like zero tolerance for threats, they are reported and investigated, and everyone is authorized to call 911, then it makes sense to employers and they will do it. We can find a way to do something for small employers that makes a difference but doesn't take away from a regulation that doesn't get into the depth that some industries need.

Jeff Tanenbaum. With regard to the concerns of small employers, the closer that you have it to 3203, the easier it's going to be for small employers to comply. It's a concept that they're already familiar with. Taking workplace violence within the context of 3203 allows the employer to identify the hazards they

experience, regardless of employer size, and develop programs that are either less involved or more involved as the case may be. The further you get from 3203, the more difficult that gets for employers, particularly small employers, but all employers. In the current draft, there's a back away from some of the exceptions in 3203, for example, recordkeeping for smaller employers. That's a major concern for small employers. Going back to 3203 language will assist you in accomplishing that while also allowing those employers that have a greater risk to address those as well. I urge you to focus on going back to 3203 language. Specifically with regards to the duplication of 3342 and the new standard, a simple fix would be in subsection (a) exception (1) which says it does not cover facilities covered by 3342, you could change that to "does not apply to facilities *or employers* covered by 3342." That would be a simple fix for the issue.

Juliann Sum If we were to exempt employers covered by 3342, then that would exclude facilities that are not in 3342 because employers have facilities that are covered and not covered by 3342. We don't want to exclude those other facilities that are related to the healthcare facilities.

Jeff Tanenbaum. I'm not saying exclude them but clarify when one standard applies versus the other standard. Make it clear in the regulation so it's not confusing to employers who have both.

Kathy Hughes, SEIU Nurse Alliance of California. Within SEIU we've been going back and forth looking at a carve out for the high risk industries that might have to reach a higher threshold than all employers. I think it's important to keep a regulation, understanding that if it's too specific for small employers, or employers that are a low risk for workplace violence, that might be a problem. However, if it's too broad, it would be rendered meaningless for the industries that have a higher incidence because it doesn't prevent workplace violence like we think it can. And I think we've proved that with healthcare. So, I like that is says "all employers." Facilities not covered under 3342, for example stand-alone clinics, would now be covered under this regulation. We may have to look at differentiating between industries. We'd like not to do that but it will depend on how bogged down this thing gets because the regulation needs to be something that's meaningful, otherwise we're all wasting time and money and our employees continue to be at risk for violence.

Gail Blanchard-Saiger, California Hospital Association. Coming from the hospital perspective, the challenge for us is we have health systems with covered and uncovered operations. For administrative ease, those health systems might treat everyone as covered under 3342. So, I think we need to recognize that; deal with that in the scope. To Jeff's point, the facilities that are covered by 3342 are clear. What gets a little challenging is you have employers who are covered to the extent that they have employees working in those facilities. So those employers are covered even though they don't operate a covered facility. So they've got a 3342 Plan for when working in covered facilities but at other times their employees are covered by 3343. Those are the circumstances that we're attune to.

Maleah Hall, Petitioner. The broad scope helps support healthcare workers working in schools and helps alleviate confusion because now those employees will be covered no matter where they work.

Kevin Graulich. With the exception of the insertion of a definition of "injury", all the definitions are pretty much identical to those in 3342. Does anyone have comments?

Elizabeth Treanor, **Phylmar Regulatory Roundtable.** The definition of threat of violence is ambiguous particularly related to the last clause, "and that serves no legitimate purpose." My members are

confused as to what exactly that is. We recommend that Cal/OSHA use the ANSI standard definition of threat that companies have been using for 10, 15 years. The definition in the ANSI standard is "any verbal or physical contact that conveys an intent, or is reasonably perceived to convey an intent, to cause physical harm or place someone in fear of physical harm." What's the goal here? We want to identify violence and address it in the most prudent way and as quickly as we can. I think there's broad agreement about that. This definition works quite well for the companies that have been using it. What it has that the Cal/OSHA definition does not is the idea of intent. That needs to be considered.

Eric Berg. The definition in 3343 is identical to the definition in 3342. We did not want a different definition. Also, intent is not always clear. For example, a mentally ill patient could be very violent and hurt or even kill someone but there's no intent on that person's part to do that. That is why we didn't include intent.

Elizabeth Treanor. Many people did not understand the definition, particularly "serves no legitimate purpose." We don't know how to fit this definition in with the ANSI definition we've been using. We'd also recommend that for completeness and consistency you remove "inmates" under Type 2 violence since they're not covered anyway.

Steven Frew, **East Bay Municipal Utility District.** When we first developed our workplace security, injury, and illness prevention program, among the things that we were very careful of, the definition of a threat needs to be relatively explicit and the concept of whether or not someone intended to do something. Then a close parallel to that but a little different, in all the conferences I've attended with workplace investigators, the investigator has to make a determination in regards to credibility. It is difficult to say whether there was intent, but it's important that it's in there because if the incident can be shown to be intentional, we deal with acts that are intentional as security issues and accidents that aren't intentional as safety issues. Workplace violence has always been deemed more of a security incident than a safety incident. The two are joined at the hip. However, I would like to drive home the point that if there is intent, specific intent is part of Penal Code 26 in California. If you allow us to have intent in the definition that is going to help us be more specific and address our investigations in a more clear fashion.

Amalia Neidhardt. Mr. Frew, would you be able to share your cost information for implementation, training, and security?

Steven Frew. I can share something in writing. (Mr. Frew shared his thoughts on the challenges of retraining their 2000+ employees every 3 to 5 years).

Anne Katten, California Rural Legal Assistance Foundation. We appreciate that this standard should be simpler than the healthcare standard, but were concerned some of the definitions in 3342 are missing from this standard, specifically engineering and work practice controls. They should be included because they are integral to preventing and controlling the hazard, although they may not be appropriate in all workplaces. Working in isolation and poor lighting can be environmental risk factors and it's important to include them as well.

Jane Thomason, California Nurses Association. Regarding the suggestion to include intent in the definition of workplace violence, intent was already discussed thoroughly during the 3342 rulemaking process. But Cal/OSHA's responsibility is to enforce the general requirement that employers provide a

safe and healthful workplace. The concern with workplace violence is its impact on employees. It is not the intent of the person taking the action but the effect on the employee that matters, both physical and psychological injuries.

Nicole Marquez. I would like to touch on the threat of violence definition and intent. More important is the impact and effect on employees. It is the employer's responsibility to provide a healthy and safe work environment. Including the word "intent" makes me uncomfortable in terms of Cal/OSHA's role in enforcement. Would Cal/OSHA have to prove intent in order to cite an employer? We want the definition to capture a broad definition of violence including gender-motivated violence. I would also like to look at the text of the regulation. We propose removing "his/her" language, and substituting it with "persons/their." This would be inclusive of those with no binary gender. I also feel that engineering controls, environmental risk factors, and work practice controls are important components that need to be included in the definitions.

Dan Leacox, Leacox & Associates. On the subject of intent and threat of violence, when we're talking about intent we're talking about a frame of mind of the person who's been accused. But, also when you talk about psychological trauma to the other person from a threat of violence, that also is a frame of mind. I'm not sure why it's so easy to make the determination of frame of mind at one end and not the other and why we assume the worst of the person being accused and assume the best about the person that's doing the accusing. Anybody who's been involved in employee incidents, knows these things get very messy and complicated and one has to look at frame of mind at both ends. You can't look at one and not the other. There's an inherent unfairness with that.

Marti Fisher, California Chamber of Commerce. I want to ask you to be sensitive to the fact that the rule we're talking about today is 3343, not 3342. Many of us were not involved in the 3342 discussions. To automatically not open up the provisions that were in 3342 is unfair because we were not all notified that that is what we were going to get. I think the discussion has to continue on some of these items that are in here that came directly over from 3342 since we weren't involved in 3342. We need to be able to express our concerns. A definition of workplace violence hazards should be added to the definitions and pointed out that it's already spelled out in the training provision (d). That would make it easier for employers when they're identifying and evaluating workplace violence hazards and looking to correct them.

Jeff Tanenbaum. I would ask that Cal/OSHA focus on 3343 rather than 3342 for the definitions. To Eric's point about wanting to keep the definitions the same, I want to remind Cal/OSHA that the Board's hands were largely tied by legislation with regard to the definitions you used in 3342. That's not the case here. Having had the opportunity to work extensively with 3342, it is far from a perfect standard. There are numerous problems with it and I wouldn't want to see those same problems come into play here. And they don't have to. A lot of the comments you're hearing today stem from your attempts to use 3342 language here, which isn't necessary. You could make it very simple, by addressing workplace violence and threats of violence, and you can have some limited definition. But the more you attempt to add descriptors to it, the less people agree about what it all means. For addressing workplace violence in general industry, it's more useful to have a broader definition. Concerning the addition of definitions from 3342, I completely disagree with that. A good example of that would be engineering controls. Even for hospitals they're virtually unworkable. But for small employers outside of hospitals, it will just make their eyeballs spin and it's not going to be very useful.

Eric Berg. Cal/OSHA is open to changing the definitions.

Kathy Hughes. Reading from the definitions – "The threat of violence means a statement or conduct that causes a person to fear for his or her safety because there is a reasonable possibility…" The "reasonable possibility" language is where, as an employee advocate, I would say that if you want to say intent, there has to be some reasonable possibility that the employee might be injured. I apologize to those in the room who were not part of the healthcare rulemaking discussions, but we have all recognized 3342 as the model because it exists. We had a lot of discussions about intent. It's a legal term. Cal/OSHA shouldn't have to prove intent. I'm sure that an employer with a railing missing is not intending their employee to be injured. Also, an employer should not have to prove intent, the employee shouldn't have to prove intent, if there's a reasonable possibility that somebody might be physically injured due to someone else's statement or conduct. SEIU also agrees with adding to the definition section "environmental risk factors", "engineering controls" and "work practice controls." Those three definitions would go a long way toward preventing workplace violence. "Intent" does not have to be part of the threat of violence definition since "reasonable possibility" language clarifies what threshold that threat has to meet.

Jeff Tanenbaum. Definitions of engineering controls and suggestions of engineering and environmental controls could be provided by the Division in guidance documents. It doesn't need to be in the standard itself. Putting it in the standard is too limiting for employers and particularly problematic for smaller employers. One way you can address the issue is to change the injury definition to the definition of serious injury rather than just any recordable injury. That will focus employers on the issues that they need to most specifically address.

Maleah Hall. I agree with the idea that intent is not needed in the definition. Based on my experience being assaulted by autistic students, they had no intent to injure me. If the definition of injury is changed to serious injury only, my concern is that we would miss the pattern of violence. In special education settings, research has shown that up to 30% of instructors are assaulted every year. There hasn't been a requirement to record incidents of violence in schools because they've been exempt. If we don't track the pattern of violence, then we can't reduce violence in the workplace. If my coworkers get bit, or scratched, maybe they're not knocked out this time, but we wouldn't know about those incidents because they wouldn't be serious injuries. I also agree that engineering controls are incredibly important, and provide examples of how things could have been done differently, for example setting up the classroom differently.

Steve Frew. There is "regulatory" and there is "advisory." Among the things that would be helpful coming from Cal/OSHA, to large or small employers, would be advisory notes that would give employers examples to better understand the definitions. (Mr. Frew provided several examples including guidance provided by law enforcement and Homeland Security on active shooter situations, and his agency's practice of installing thumb latch deadbolts in offices to allow employees to lock themselves in, in an emergency).

Michael Musser. Regarding security in a building, one of the things we're doing in education is making sure that classroom doors can be locked from the inside by those who should be able to lock them, like a custodian or an educator. You want to make sure that the appropriate person has the ability to lock the door in the event of workplace violence or other violence on the campus.

Kevin Graulich. Let's move on to (c), the Prevention Plan.

Kathy Hughes. We would like to see, "in effect at all times" added to (c) after "maintain an effective Workplace Violence Prevention Plan." Probably implied but it would be great to have that in there. Under (c)(3), coordinating implementation of the Plan with other employers working at the same workplace, I guess that's contractors. I would like there to be a training component, although that might be difficult. We want a strong component for contract employees to make sure that their incidents are reported, recorded, and investigated. The provision from 3342 that it is OK for employees to involve law enforcement if needed is missing from the Plan. (c)(7) is missing employee input in the development of the training. It's missing the assessment procedures regarding environmental risk factors. This is especially important in industries where employees work alone or in isolation and may not have any way of alerting anyone that they're in trouble. Regarding fixed workplaces vs. offsite workplaces, we need to address at some point that a lot of our worksites are not at the employer's place of business. I don't see that addressed here.

Elizabeth Treanor. We would like the first sentence of (c) Workplace Violence Prevention Plan to make it clear that "safety and health" "owns" most of the compliance plans that Cal/OSHA requires, but for workplace violence, safety and health is not the owner. It belongs either to security, legal, or human resources. So, to require that it be part of the IIPP, which is how some people read this, we would also like to permit that it be a separate document.

Marti Fisher. On that same provision (c), the employer should be able either incorporate the Workplace Violence Prevention Plan into their IIPP or keep it separate. Your first sentence and last sentence contradict each other in that regard. You should clarify that the Plan can be either separate or part of 3203. Regarding (c)(2), the procedures to obtain active involvement of employees and their representatives in every aspect of the Plan, we have trouble with. The employer is ultimately responsible for the Plan, maintenance, implementation, and training. While employee input can be important, we're concerned that this will end up being a mandate on employers to allow employees to be creating the plans. The employer needs to be the one controlling it and providing safeguards for the employee.

Jeff Tanenbaum. Regarding (c)(2), procedures to obtain the active involvement of employees, I agree with the prior comments but, would also add that sometimes employees don't want to participate in the process. They feel it's the employer's obligation. The language Cal/OSHA has appears to imply that that must happen. On the flip side there's nothing that says that employees and their representative must participate in the process. So the obligation falls entirely on the employer and sometimes it just can't be done. I suggest that alternate language would be that "effective procedures to attempt to obtain the input of employees." Regarding designing training, employee input would be great, but we don't get much of that as a practical matter. But a more important point, the idea of involving employees in investigating workplace violence incidents, there will be some incidents where that's appropriate but there are going to be many where it's not appropriate. Because of privacy concerns, you're not going to want employee involvement, for example sexual assaults. The victims in those cases are often very concerned about who's investigating those incidents. Regarding section (c)(4), the phrase, "including Type 3 violence," is just extra words and is confusing. Regarding (c)(6)(A), the language "how an employee *can* report a violent incident" perhaps should be rethought. In this case how an employee

must report. If we're really concerned that employees know about these incidents then why not require it?

Jim Dunnegan, **Varian Medical Systems.** Getting back to (c)(3), concerning outside contractors, for example painters, we expect their employer to have the required programs. As far as contingent employees, those that work for another agency but get direction from our management, they get the same safety training our people do. We want to clarify that. OSHA expects us to give them the same safety training as our own employees. That's been an expectation all along and we as a company do that.

Nicole Marquez. We would like to propose a few additions to the definition of the Workplace Violence Prevention Plan, echoing that it needs to be in effect at all times. This may not be appealing to many in the audience, but we feel that a copy should be made available to employees, including contingent employees and their representatives, at all times. This is important for workers to understand what employers have in terms of hazard evaluation and corrective measures. It will allow workers and their representative to have meaningful participation in development and implementation of the Plan. Workers are experts in their workplace and have valuable input for identifying and addressing hazards; that expertise should be utilized. We also want to propose that language be added to (c)(4), procedures for reporting of violence to a designated person who is not a direct supervisor. This is important. A lot of times the perpetrator is the complainant's direct supervisor. The employee should have an opportunity to complain to their employer without the fear of retaliation. In (c)(6)(A), how an employee can report an incident, we'd like to see "without fear of reprisal." In (c)(6)(d), the following language should be added, "How an employee can report a violent incident or threat to local law enforcement without fear of reprisal." This is similar to what is in the healthcare standard. Representative participation is important. That definition could be cribbed from the hazard communication definition or 3204 definition of designated representative. Modify "representative" to "designated representative" so that way there's consistency.

Anne Katten. It's great that you're providing for the plan to be at the worksite, but it should also be made available upon request in a copy form to a worker or their representative so that they have enough time to adequately review it. I second the language "not a direct supervisor" and "reporting to local law enforcement without reprisal." Particularly in agriculture, there needs to be specific procedures for reporting Type 3 violence to a designated person who is not the direct supervisor. Type 3 violence is the most common form of violence in agriculture. It is also important that the Plan specify that the employee can report incidents or threats to local law enforcement without fear of reprisal because many workers feel intimidated and won't report even when they are in danger. In (c)(8), procedures to identify and evaluate workplace violence hazards, environmental risk factors should be added. To make things work better, we think there needs to be some kind of form created by Cal/OSHA where an employee has the opportunity to fill out in their own words, with assistance if needed, what happened in an incident. The form would have information about their rights, including their right to file a complaint with law enforcement. A copy should be provided to the employee as part of the investigation.

Steve Frew. We will investigate any act of violence or threat of violence, but when it's Type 1 violence, for example one of their field workers being held up at gunpoint, we won't investigate that. The police investigate that. The perpetrator has no legitimate business at the worksite. They're just a criminal.

There not doing it because they're mad at EBMUD or the employee. We have those investigated by law enforcement, but we certainly document that it happened. We talk to the employee, follow up to make sure they're OK, offer counseling. But we specifically call out Type 1 incidents as not being an official or formal part of our program that we investigate. Not sure what Cal/OSHA might think of that, but it's important to point that out for our discussion here. There are a number of places where the draft talks about "records." Records, by definition, can be very, very broad. Typically, an employer tells an employee that if there's a personnel investigation that's taken place, the company will share lessons learned but not necessarily the specifics, the names, or the sensitive nature of what took place. I don't think that's been allowed for in this loose definition of all records being shared with employees. It also doesn't say which employees, does that mean all employees? Anybody can get that? Or does it just refer to the employees that are directly involved in the investigation? Do records include the investigators notes? There are incidents that are so sensitive that there's no way the details could, or should, be shared with other employees.

Kevin Graulich. We will be discussing the records section later. I'm sure that others have comments on records as well.

Bruce Wick. Regarding (c)(2), a small employer is not going to develop procedures for actively involving employees. That's just going to be a citation for them. That size of employer typically takes a model program and implements that. If we say you have all these extra steps before you can implement this Plan, a lot are just going to give up. That's not what we want. So, we need to think about excluding, or minimizing by size or industry, some of these employers here or we're going to be creating something that's just words on paper and will not advance employee protection. (c)(3), subcontractors to another subcontractor have no legal relationship with each other; their only legal relationship is with the general contractor. So one subcontractor can't coordinate with anybody else, legally, or require anyone else to. Subcontractors are coming and going from day to day on construction jobs, what is there to coordinate? It says, "where applicable" but that's subject to significant interpretation. This is an example of where in the construction industry this would be a nightmare to try to implement when every employer that shows up should be responsible for themselves.

Kevin Graulich. When we look at (c)(2), effective procedures to obtain the active involvement of employees, we see the employer spelling out what the procedure is and the level of involvement that they will be getting. So, for a small employer, that involvement may be very small. In a larger facility, it would be much more involved. We see this language as giving the flexibility to the employer to design that into their Plan. Are we misinterpreting that?

Bruce Wick. In my opinion, yes. Compliance safety and health officers (CSHOs) say, if it's "effective," it's happening and you can demonstrate that it's happening. The word "effective" is an issue as well as "obtaining the active involvement." How would you prove that? When you've got a small employer with seven employees and a part-time safety coordinator you want to get a Plan implemented as simply, efficiently, and quickly as possible. To say that you're going to have to go through this extra step of involving people, employees have a lot of good information that's helpful, we want to encourage that, but to mandate that an employer with 7-15 employees go through that extra step before you implement the Plan, that's counterproductive to what we're trying to accomplish.

Kevin Graulich. We look forward to suggested language to try to tweak that.

Kathy Hughes. (c)(9) correcting hazards in a timely manner, "timely manner" is broad. The healthcare standard talks about imminent hazards and interim measures. There are things that need to be more timely than others. Having a little bit of that in here might be helpful. A threat of violence versus an actual assault. One is probably more imminent than the other. The other concern is (c)(10) procedures for post-*injury* response and investigation. There's a distinct definition of injury which would not necessarily include the threat of violence. Suggest change to post-*incident*. An incident may or may not result in an injury but it probably should be reported and investigated. There's no reference at all to active shooter. There is active shooter language in the healthcare standard that would be useful for every employer. There's no reference to reviewing the Plan. If we're not evaluating or reviewing the Plan at some point we won't know if it's effective. Concerning effective procedures to get employee involvement, the employers just have to solicit input from their employees. Ask employees, "what do you think of this Plan?" The proposed language doesn't spell out what you have to do. Asking employees what they think and what they need is vital. It's what we do for all safety issues – ask employees what they need.

Jane Thomason. The procedure for hazard identification is a concern. It requires that employers conduct periodic inspections to identify hazards and whenever the employer is made aware of a new or previously unrecognized hazard. That's actually less than what is in 3203. 3203 also requires employers to conduct inspections whenever new substances, processes, or procedures are introduced to the worksite that present a new occupational safety and health hazard. Even if you adopted the IIPP language it would still be insufficient. The risks for workplace violence are often changing day to day depending on staffing levels, and who's in the workplace that day. So having a more active requirement, and I think the healthcare standard provides a good model around environmental risk factors or community-based risk factors, but also risk factors that change minute to minute with people's behavior. We would like to see more specifics about what a hazard assessment ought to include for it be an effective risk assessment. There's no requirement that records be kept of workplace violence incidents similar to the violent incident logs in the healthcare standard. It's important for employers to understand not just when injuries occur, but when incidents occur whether there is an injury or not, or when threats occur. Those are the points that indicate that prevention is needed before someone gets hurt. The violent incident log is an important recordkeeping requirement. That's information that's not recorded anywhere else that employers need to be able to do effective prevention before employees get injured. The draft standard does not require any Plan review or update. We would like to see an annual review requirement that includes input from employees and their designated representatives. This is important to make sure that the Plan stays up-to-date and employees have an opportunity to provide their expertise when procedures change. Procedures for calling law enforcement should also be added including that employers can't disallow employees from calling law enforcement, or retaliate against an employee for calling local law enforcement during a violent incident. We would also like to call attention to the lack of active shooter mention. We represent nurses who work in outpatient clinics on college campuses who have expressed significant concern with the rise in school shootings. Gun violence at colleges has increased 153% in the last 10 years. This is not the most significant source of workplace violence that our members face, but employers need to be prepared to respond to it.

Michael Musser. In my experience, when an educator is assaulted by a student or parent, school districts will often try to handle things in house because they have plans for that. The problem is no employee should be refused the ability to contact local law enforcement if they've been attacked. When

we talk about employees or employee representatives being involved in the Plan or the review of the Plan, the employee is the expert along with the employer. You can develop language that understands that there are going to be large employers and small employers. How can we make that work where the employer is still the one that is required or mandated to develop the Plan, but those immediately affected, the employees, are included in the development. We can work that language out. There are going to be employees that could care less but there are going to be those that have knowledge about what is going on in the workplace on a daily basis and they can be quite an asset to the employer when they're developing a Plan that works for their particular environment.

Elizabeth Treanor. Regarding the ability for every employee to call law enforcement, one of the concerns we'd like to make Cal/OSHA aware of is, if security doesn't know that law enforcement has been called, when the police show up, security does not know where to send them. There's a lot of time that's wasted on figuring out where to send them. Some companies have a policy that the employee calls security and security calls 911, or the employee can call 911 after that but the first call should be to security.

Gail Blanchard-Saiger. The issue raised by the previous speaker is the exact one we have encountered with the workplace violence prevention in healthcare standard. But the language about calling law enforcement was in SB1299 so it necessarily made its way into the regulation. We have interpreted it to allow employees to do that, but also to have a policy that says you also need to call us for the same reasons that the previous speaker articulated. If you adopt that type of language, it would be helpful to explicitly say that it doesn't preclude the employer from having some other method to make sure that these realities are addressed.

Jay Weir, AT&T. We have a very robust program in our company but it's run by our asset protection. It's not run by our EH&S (Environment Health and Safety). We'd be adding another program to our EH&S that's already very well run by our asset protection. We want to make sure that we can have a separate document because it's not under EH&S. We have a very robust 3203 and all the steps that you're talking about here are covered under 3203 anyway. Let's keep it simple, and keep it 3203, especially for small employers, so it's easy for them to understand.

Amalia Neidhardt. Could you share information on AT&T's costs for their Plan and the cost of expanding it with regards to training?

Jay Weir. We already train everybody through our asset protection group. If we had to retrain everybody, the costs would be about $100/hour, $160/hour for the construction employees, (loaded labor rates) for 4 hours for 80,000 employees. It takes time and it's not cheap.

Nicole Marquez. Alarms and alerts are missing from the Plan. Some type of system to make sure that those are incorporated is extremely important in industries like janitorial, where workers often work at night or in isolation. Given the high incidence of sexual assault for women in this industry, it's very important to have that in the Plan. Women in agriculture and hotel housekeeping are also subject to gender-motivated violence. We support a violent incident log. There is a requirement that the employer keep records of injuries in the record keeping section but the way that injury is defined in the current draft is limited to those types of injuries that are reported on the log 300. That limits what kind of information employers are required to record and what information that employees and their

representatives would be able to access to identify trends and patterns of violence that doesn't rise to an injury.

Gail Blanchard-Saiger. The analysis of the economic impact on affected employers conducted for the workplace violence in healthcare standard was grossly understated. We support the idea of training, of course, but you need to obtain industry input on the costs of the entirety of the Plan, doing your assessment, putting your Plan together, doing the training. It looks like you are doing that now but my recommendation is you can't follow what was done in the healthcare workplace violence standard because it was grossly understated. Now that we have some experience, we'll be happy to share that information with you.

Maleah Hall. Concerning (c)(10), "procedures for post-injury response," I would like to see something that addresses what should be done if an assaulted employee loses consciousness. Perhaps a link to some guidance. Myself and other assaulted workers have driven home after these incidents and we shouldn't have.

Elizabeth Treanor. Loss of consciousness is identified as one of the reporting criteria in the log 300 so employers are supposed to follow up and do something with those.

Kevin Graulich. Thank you everyone for this morning's input. We will break for lunch and resume at 1:00.

LUNCH

Eric Berg. Can we compromise or come to agreement on some main issues?

Amalia Neidhardt. Do we need to clarify that the Plan applies to active shooter scenarios? Does the Plan need to include active shooters?

Elizabeth Treanor. Active shooters are covered already in the draft.

Marti Fisher. I agree with previous speaker, prescriptive language results in more training costs.

Jane Thomason. Active shooter violence is very different from other violence. Most industries could face active shooters, we need to make it explicit that active shooters are included in the Plan. We need explicit requirements for procedures to respond to active shooter events, and there needs to be spelled out procedures for active shooters.

Eric Berg. We could add a non-mandatory appendix on engineering controls and administrative controls; that is one option.

Katherine Hughes. It should be required and not non-mandatory. SEIU's stance is that active shooters should be spelled out specifically as a separate clause with procedures on how to deal with active shooters. No industry is free from the hazard. We want environmental controls, engineering controls, and work practice controls to be part of the regulation. They don't necessarily need to be the same as 3342. Those are key elements of a Prevention Plan.

Dan Leacox. Regarding (c)(8), "identify and evaluate workplace hazards," it needs to be spelled out. Some are suggesting we have a plan to address every type of violence possible. Most employers can't do that. The phrase is too broad and expansive. Should identify what could be reasonably anticipated, so maybe use the term "reasonably anticipated" and not just put up to imagination.

Nicole Marquez. I support requiring a procedure in the Plan for active shooters and not as a non-mandatory guideline. Environmental risk factors, engineering controls, and work practices need to be part of the standard, and not as guidelines or non-mandatory appendices, they should be mandatory.

Eric Berg. Regarding active shooters, do you want a run, hide, tell policy?

Nicole Marquez, I would defer to someone with more experience on that.

Steve Frew. I have a law enforcement background. Regarding active shooters, the Cal/OSHA IIPP (Injury and Illness Prevention Program) guidance security program is very good, and industry guidelines and programs exist. Active shooters should be a significant part of an IIPP. Active shooters are handled by law enforcement. By the time law enforcement arrives, the event is over. I recommend workplaces have local law enforcement come by and give a presentation at the workplace on active shooters. "Run, hide, fight," organizations don't want to tell people that last part because they are risk-averse. DHS (Department of Homeland Security) has a program on their webpage. It's simple to do training on that. It's different if you do one for a hospital versus somewhere else. It happens everywhere, universities, theaters, and no one is exempt. You can't prevent it, you try to prevent, you deter criminal activity, you detect when it happens, you assess, and you respond.

Meleah Hall. I have experienced active shooters in several ways in education. I agree we need more information on active shooters. I worked for 18 years in education and never got any training on it. We need more information and an appendix. Education has a lot of catching up to do and needs a lot of support, so more information would help. In January, there were 11 shootings in K-12 schools.

Amalia Neidhardt. Please submit comments if you have proposed language. Also, on section (c)(2) regarding procedures to obtain active involvement of employees, what if we were to use "means of involving" or if you have even better suggestions or alternatives I would like to hear those. "Means of involving" instead of "actively involving."

Marti Fisher. We can come up with something and we will work on it and provide that back to you. I will talk to my folks. Also, we have some concern, the term "their representatives" and what does this mean? We are definitely opposed to any random person being designated a representative and included in planning the employer's Violence Prevention Plan. Would like to see the definition of "their representative" be "their union representative."

Eric Berg. The Labor Code defines "representative" as the collective-bargaining unit and someone who has written authorization from the employee.

Marti Fisher. We are absolutely opposed to that, we don't think one should be able to go out and say "my neighbor is really interested in this stuff so I'm going to designate them as my representative." We are okay with a collective-bargaining representative, but not an attorney representing. I don't think that an employee should be able to designate and bring along their attorney to assist the employer in developing their internal program.

Gretchen Higgins, CalTrans. We are undergoing some work on our violence program. We are consolidating into a headquarters-based statewide program, and have about 20,000 employees. We are going through each district office. We are vetting and have a committee, so all have a say in the program. Once that has been completed, it will be vetted through our labor relations. So in (c)(2) where it says "their representatives," I hope we can use labor relations to handle that portion. The other concern is that this program itself, there's a really good baseline here. We have to remember this is for all industries and if they take that into account, and being too specific might hinder some of the larger agencies, specifically our state agency. We are taking this as the baseline and building on that for our program. Also, for the active shooter, having that as an addition but rather as a separate program is also good. We currently have active shooter training; received through the CHP, use DHS as information. For (c)(8) where it says "evaluate workplace violence hazards," and "doing periodic inspections," I wasn't quite sure where that would be headed to. Our unit is going to be in charge of doing the actual investigations, so does that include the inspection of the facilities? It wasn't quite clear.

Kevin Graulich. I believe that was pulled directly out of 3342. I would have to look back to see how that was developed.

Gretchen Higgins. I am concerned about how to roll that out as part of the workplace inspection program. I'm looking at it as more of an investigation unit.

Eric Berg. This is separate from investigating. As far as the IIPP, periodically you are supposed to go through the workplace and look for hazards. This would be similar but for violence where you would on a regular basis go through the workplace and identify violent hazards and preventative measures that can be taken that would help prevent violence.

Gretchen Higgins. Is that separate from training? I'm really confused how you can identify workplace violence hazards just by doing a walk-through.

Eric Berg. Someone had mentioned about putting locks on doors and that is something you could identify, to eliminate or reduce the severity of violence. Barriers and other ways; there are many methods that can be used.

Gretchen Higgins. I would feel comfortable implementing that in our training practices, how to identify hazards such as a person in a volatile situation.

Eric Berg. Yes, you can incorporate such work practices in your training.

Amalia Neidhardt. Can CalTrans share info on costs on its program development?

Gretchen Higgins. I will e-mail it.

Nicole Marquez. We feel it's important to involve employees and representatives in the development of the Workplace Violence Prevention Plan. Workers are the experts on what hazards they are being exposed to and coming up with solutions and ways to address them and respond, it's really important. In addition, I feel it's important to involve the representatives and we would urge the Division to include a definition similar to the definition of representative in the PSM for petroleum industries. In the PSM regulation, the designated representative is a collective-bargaining agent without regard to written authorization, and any individual or organization an employee gives written authorization to. So we feel that definition would serve the purpose of defining what a representative is. Representatives should

play an active role in supporting workers who don't have a union who rely on worker centers to help them navigate situations in their employment.

Amalia Neidhardt. So Nicole, if I understand you, you have a concern about collective-bargaining representative?

Nicole Marquez. I want the definition to be broad to include people with CBAs and people who identify with an organization such as a worker center, worker advocate, or attorney at an organization, to help those people in the development of the workplace violence prevention program.

Juliann Sum. I want to reply to that. This standard won't go beyond 3342. So, to the extent that that goes beyond 3342, that will be difficult to justify. So this language currently mirrors what is in 3342.

Amalia Neidhardt. Another area that I'd like to see clarification in is the issue of review of the program, the annual Plan review, or when there are changes. Can I get comments, concerns, or suggestions please?

Katherine Hughes. I was intimately involved in working on this thing. It's important when you have a Plan, you have to review it at some point so that you know how to determine if it's effective or not. If it works or not. The healthcare one is very detailed, and I'm sure some people have a problem with that. So there should be some kind of review of the Plan at some point in your periodic inspections or whenever that is. We will know if the Plan works, if it's too broad or too specific. Also, I'm not a health and safety person, I'm not involved in the construction industry, but I understand that workplace violence is not as concrete as slips and falls. It's easy to say you need a guard rail or you need a mat and this is not that. We've had a lot of discussions around violence and the fact that is it's not that concrete. But I still think it's important to know and for us to recognize in the work of the Division that what we've laid out are procedures that do this, but you don't specify exactly what procedures are. When you do a hazard assessment your hazard assessment might be different sizes, your Plan is going to reflect the hazard assessment. We can't expect an employer with two employees to have the same Plan as AT&T. We can work on this. It doesn't have to be cookie-cutter, or one-size-fits-all. It is around hazard assessments and it's doable. The designated representative, I understand where Chief Sum says in the healthcare regulation "and the representative." There is an existing Labor Code which defines what a designated representative is. When you are looking at industries that are largely nonunion, then having a designated representative, if it's someone who's unqualified it's not going to do me any good as a worker to designate someone who is ineffective. But it's important with things like language barriers. It might be important to designate someone representing you on this, if you're concerned about retaliation. I understand where you can't go beyond 3342, but I also think that there is something to be said for designated representative.

Amalia Neidhardt. Any suggestions on Plan review? If we don't want to dictate that it be done annually, perhaps we could have language that says when there is information the program is not effective, as an example, if there is an incident, then review the Plan. Are there any suggestions that would be a problem versus the standard saying "annual review?"

Katherine Hughes. Under procedures to identify in (c)(8) where it's talking about scheduled periodic inspections to identify, and work practices, and whenever the employer is made aware, somewhere in that we could do some kind of review of the Plan. If you are scheduling periodic inspections, I would be

reviewing the Plan and the recordkeeping. There would be those steps instead of just visually inspecting something, there's more to it than that. So there you could put something about reviewing the Plan. If you're going to be doing inspections you look at your plan to check the Plan.

Steve Frew. Regarding Plan review, I suggest whether or not a program needs an annual review, if you go to an organization, it's okay if you want to look at their program. We wouldn't want to be restricted to reviewing it once a year. If we are dealing with 19 threats a year as an example, these are living documents. I wouldn't want to be restricted from doing that. You don't always see workplace violence coming. You are going down the right path, just be reasonable about it.

Marti Fisher. This is not the only regulation our members are subject to, our employers have tons of programs they are having to implement. So we want to keep this as easy as possible for employers to comply with, where we don't have separate requirements to review a different program. Let's keep things consistent. An annual review of the program is not the best way to do it. Instead, if you see an unrecognized hazard or when there's an incident, you should update the program, but to do an annual requirement is just another gotcha requirement.

Meleah Hall. We should consider having a minimum of one year, and if needed you can review it more often. If you haven't had to review it, maybe you haven't had many incidents, and maybe your Plan is working. So it may not be as difficult to review as it was to write it in the beginning.

Amalia Neidhardt. One other issue that I want to hear comments, concerns, any possible barriers or recommendations is the issue of logs. We haven't touched recordkeeping. Are there any comments on that? It's not a requirement currently, but someone brought it up.

Kevin Graulich. We had some people say that there should be a log. So if that's the case, why? Is there opposition to having a log?

Nicole Marquez. The way that injury is defined is pretty narrow. In the recordkeeping requirement, the employer is only required to keep records of violence injury investigations, so I feel that that would really narrow the scope of the records that employers are required to keep. When workers request records they should have access to that information so that they can see if there are patterns or trends or other people being injured or threatened. That should be included so if you have the definition as you have it now, injury is pretty narrow. So we recommend not having that definition, and having a violent incident log similar to 3342.

Jane Thomason. I already made comments about how a violent incident log should be required in this standard, recognizing that it's not just physical injuries that meet the reporting log requirements that impact employees that can be prevented by employers, that it's all threats and how violence is defined. You copied the definition but you didn't quite follow through how you structure the draft regulation to require employers to capture information, it's just the narrow definition of injury. Also, employers are not going to be able to effectively prevent violence, especially the more severe injuries, if they are not paying attention to threats and near misses where violence happened but someone wasn't injured to the point of the 300 log requirements. Some employers are not required to capture and review on all of those instances. Then they are not going to have an understanding of how violence happens in the workplace, and won't be able to prevent it, so that's why the violent incident log should be required here.

Jim Dunnegan. Anybody in their profession who doesn't look at leading indicators, which she referred to as a near miss, we call them incidents now. The same thing is true for workplace violence. Every one of them is investigated in our organization by human resources and security, on workplace violence. Safety gets involved as an ancillary because at one time safety reported to HR. So that's how safety got involved in our organization. The bottom line is that we do look at all threats, we take everything seriously and investigate it and we track it. It's not necessarily kept in one place on a log. Those things sometimes are highly confidential. From my HR colleagues, you get information that you don't want in the public sphere at all. The good employers are going to track those incidents, the leading indicators on the violent side, as much as they track them on the safety side.

Katherine Hughes. I would love to see a log but I'm just going to go with this. One of the things I pointed out that I thought needed to be in the Plan was under (c)(10) "procedures for post injury response and investigation." I think that the injuries limit it, because you lose any tracking or procedures for threats of violence. So I would look back at procedures for post-incident response and investigation and adjust. If you're looking at recordkeeping rather than a log, under (e)(3) where it says "records of workplace violence injury investigation," I would maybe say "incident" so that's capturing not just your definition of injury but also the threats of violence and the newer keeping of records of what that investigation is. That would be not a log but would be something more than just injury, if we are in the spirit of compromise.

Meleah Hall. I wrote the petition because of the log 300, and because educators were not included. Consequently, it took me a long time to find some research data on workplace violence in educational settings. It's incredibly important that data drives creating a safe environment, we have to be able to reflect upon data. So if we don't have a log or a place where we have the data, then the Plan won't be as effective.

Juliann Sum. I want to invite employers to comment on the log.

Kevin Graulich. So far we've had comments in favor of a log, are there any opposing? And how to fix it?

Bruce Wick. I wouldn't say opposing, but I have a thought. We have Type 1 and Type 2 violence. Employers who are more Type 3 or 4 violence where you don't expect it, anyone could have a spouse that comes in and does something violent, or an employee that you let go who would come in and do something violent. Employers that are Type 3 and 4 should have lesser responsibilities. Those employers can educate and they can train, but nobody's coming into the place to rob them and hurt somebody in the process. Then there is employer size. An employer with 20 employees and Type 3 or 4 violence might go years without any violence. But for an employer with 30,000 employees and subject to Type 1 and 2 violence, maybe there's a consideration of that. We may be trying to put too much on the one side and that impacts the other side. People who really need protection need a depth to it, and there's others with a substantial difference in exposure who don't need that much.

Juliann Sum. I could understand that Type 3 and 4 is pervasive everywhere, and less foreseeable then Type 1 and 2. As for size of employer, there are some small employers where the risk is high like a 7-Eleven. So size of the employer is less of a problem than whether it's Type 1 or 2. Do you think it makes sense to have some kind of logging for Type 1 and 2?

Bruce Wick. I don't want to speak for Type 1 and 2 employers. I'm on the construction side where for the most part they have Type 3 and 4 exposure and the log doesn't seem to make sense.

Juliann Sum. Do any employers here have a lot of Type 1 and 2 risks of violence? (No response) So we need to get that input somehow.

Marti Fisher. We need to talk about the log in context. We haven't dismissed it out of hand but I think the context is in the recordkeeping and access to records section. We have a lot of concerns about the recordkeeping section, especially the public disclosure of investigations. There are a lot of personnel matters involved, especially when you have small employers. There are many records that should not be disclosed. It could be harmful to the employer. It could be harmful to the individuals involved.

Elizabeth Treanor. Some of the larger employers that have all four types of violence are tracking these things already and they manage them. I will give an example. You have one company that manages retail in one way, and warehousing in another way, so we have different parts of the organization and they are managing these things differently. We have to think carefully about adding one more requirement. For them it will be paperwork and records to keep and more opportunities for citations if something didn't make the log and it's in other records. Will it really advance the cause? One suggestion might be to have summaries of investigations rather than the detailed investigation and corrective actions records. Those are the two essential parts: what happened and what will you do in the future to ensure this doesn't happen again. The description of the workplace violence log in section 3342 log is an awful lot of information. You say to omit personally identifiable information, but I don't know how you fill that log out without it being easy for people in the work group to know what you're talking about.

Eric Berg. Would you be okay with a summary for incidents or do you want it limited to injuries?

Elizabeth Treanor. I'm certain companies have incidents, I'm not sure they would be supportive that they would all be accessible. A log was not in your draft, so I didn't talk about it with our clients.

Eric Berg. If we went with your idea, not with the log but a summary of incidents, would you be okay with that and not just limited to injuries, as leading indicators?

Elizabeth Treanor. I will get back to you on that.

Jay Weir. We have all four types of workplace violence. All that information is kept through human resources and not EH&S. It would be difficult for us to make summaries because it's protected or privileged, because people don't want it out there. I'm not saying we couldn't do it. Sometimes I have trouble getting that information in my own company. Unless you blank it all out, you're going to run into some issues. If there's one more log, who's going to do it? That information is under HR, not EH&S. Let's keep it simple. We already have programs in place.

Amalia Neidhardt. Could you share the skeleton or elements of your program?

Jay Weir. Yes, and I can put in some comments. We have several different programs that feed into this. We have a program called Street Smarts and some other programs. When a serious accident happens, we make an envelope that describes what needs to happen to prevent the incident from happening again. I don't want to have them providing body pictures of the incident to employees.

Shauna Everts. CalTrans would like to stick with log 300.

Jim Dunnegan. Is it good to share an incident where an employee was terminated? It is problematic that the information gets out. A name of a terminated employee is confidential. Understand what it is you're asking for and why employers might be reluctant to give it.

Steve Frew. I want to mirror what Jay said. A log is unnecessary and it puts agencies like mine in a pickle. Think of the personal and sensitive information that you would not want out. I deal with victims that get beaten up for a stolen backpack or a stolen car, or an ID that was stolen out of their car. Not workplace violence but incidents. We handle 600-900 events per year in an organization of my size. Workplace violence is a smaller number. In new employee orientation, we speak about workplace violence. The training scares employees on first day of employment. These questions are going to dig into sensitive issues and people's private lives. We should be careful what we ask for.

Juliann Sum. Question for the representatives on the worker side. Right now we have the log 300 where workers can look at injuries and patterns of injuries to prevent future injuries. The petition came out because an industry is not required to keep a log 300. So this is a way to address that. So now we are talking about lowering the threshold from injuries to incidents. Is there something about workplace violence that is different than all the other hazards on a jobsite, like a slip hazard incident that wouldn't go on the log 300. If we expand what is required to go on the log 300 to incidents. What is the justification for lowering the threshold to violent incidents versus other incidents?

Meleah Hall. I have an example, where a student punched the principal. The student was transferred to another school, the student threatened me with graffiti and showed up at my house and graffitied my home. So often there is a pattern of threatening behavior that a log could call out. Violence is the second leading cause of death. For schools to be safe they definitely need some data.

Amalia Neidhardt. Could we put a statement in 3343 that for industries not required to keep a log 300, that those industries must keep a log? Would a log 300 clearly identify it is workplace violence?

Meleah Hall. I considered that. Do the log 300 rules require employers to clearly record violent injuries as caused by violence?

Katherine Hughes. I am a nurse. If you're looking at threats of violence and the potential of escalation, usually there is a warning sign. It's important to keep track of that stuff. I don't know if log 300s record injuries as violent injuries. It's important to track in a manner where employees can look for patterns and warning signs. The definition for workplace violence includes threats, so those threats need to be tracked somehow. Records need to be kept of these precursors. Maybe they can be kept in other required paperwork.

Nicole Marquez. To answer the Chief's question, regarding how this information is different, what we have seen in low-wage immigrant workers like janitorial are gender-motivated workplace violence. It starts with threats, which are things that wouldn't be captured in a log 300.

Juliann Sum. What we are trying to get at, for example, is imagine a substance use that causes chemical burns, but the chemical burns are not rising to the level where they need to be recorded on the log 300. Why is workplace violence more important than those types of hazards, for example? Try to be in our shoes where we have to justify this.

Katherine Hughes. You're right, there shouldn't be any difference between chemical burns and assault. Let's log it all.

Meleah Hall. I don't have the statistics for this, but I don't know that individuals who experience workplace violence report it as often.

Anne Katten. If you're under threat of workplace violence, and there is a stress and psychological trauma associated with that which is not physical injury. It might not rise to the level where someone needs counseling. We can consider that these incidents result in likely psychological trauma, which is injury and should therefore be reported.

Juliann Sum. How would a safety inspection identify psychological trauma?

Anne Katten. Depending on the situation if someone seemed threatened and upset. Women farmworkers report feeling traumatized, helpless and they don't come forward until they feel desperate.

David Water, EBMUD. I don't think there's any reason to keep a violent injury log and not for other hazards. A violent injury log will detract from other safety responsibilities. If certain industries don't have to keep a log 300 then maybe that's what we should be fixing. Don't try to fix that through this regulation.

Juliann Sum. Given the confidentiality concerns you have, what solutions do you have for an alternative to what we are proposing?

Bruce Wick. We have good employers who do leading indicators and fix problems. They don't need a log because they deal with it right then. If employers have to have a workplace violence log, they have to tell the employee who reported the threat that this could be found by any other employee. They could have access to the investigation. How many employees are going to shut down? How many employers will back off investigating? Cal/OSHA can't reveal the complainant when they get a complaint.

Jim Dunnegan. There was a case of sexual harassment with threats. When they called the woman in to question her about the threats, she started shaking, and said "please don't tell him you spoke with me" and she started crying. So confidentiality is important where a physical threat could be involved. Sometimes redaction will not eliminate enough information to make a record confidential. I looked in the regs for a definition of confidential and didn't find anything except for in the zoonotic regulation. We need a definition of "confidential" and employers need to be allowed to redact that information.

Kevin Graulich. Are there any comments on training and recordkeeping?

Perry Poff. Small employer exceptions to the recordkeeping requirements in 3203 should be kept to avoid confusion.

Michael Musser. We want to require that public schools keep records of injuries, just like any other employer out there, so we can protect employees on school sites. I recognize it's a challenge. But it's important and timely.

Nicole Marquez. We support a violent incident log, particularly vulnerable industries like hotel housekeeping, agriculture, and custodial work were you have women, immigrant, and/or low-wage workers. Such recordkeeping is really helpful in informing workers about hazards they are exposed to and what kind of plan the employers are supposed to have. We would like to propose some language

around training. Training requirements should include in-person and qualified trainer requirements. Employees should have an opportunity to have their questions responded to. It is extremely important that workers and their representatives are involved in development of the training curriculum, and ensuring that they are culturally and contextually appropriate, and also that the trainer is culturally and linguistically competent. In terms of adding language around qualified trainer, we suggest what is required under DFEH regulations. So it wouldn't be something that is not already required, so feasibility shouldn't be an issue.

Bruce Wick. Regarding recordkeeping, maybe Type 3 or 4 violence employers only have very few incidents over multiple years, so this may be an appropriate place to cut the five years to one year for those employers subject to Type 3 and 4 violence.

Elizabeth Treanor. I have concern regarding (e)(3) + (5), "access to records." These records can have sensitive information and if anyone can access them, then that's a problem. There's a trust factor between the employees doing the investigation and the employees reporting them. Reporting employees are worried there could be reprisal, but it wouldn't be from the employer. We are hoping that no personally identifiable information is released. If you delete (e)(5) then that's good. (e)(3) rather than records, should be summaries of injury investigations including corrective actions, and we recommend one year instead of five years because it's the same as training records. Regarding (e)(5), this is highly sensitive information, so we recommend 3204 not be used. 3204 permits employees to have access only to one's own medical or exposure records and not those of other employees. So, there are certain protections under 3204 that are not included under subsection (e). Protections should be put in place there so that confidential information is not released.

Marti Fisher. I agree with the previous speaker. I also suggest 3203 recordkeeping exceptions should not be stricken. There should be no personally identifiable information in records of investigations or conclusions where one could figure out who the individuals are. We recommend one and not five years. (e)(4) where all the records need to be turned over to the Chief, I would recommend those injury and investigation records not be subject to public record act requests so that they remain confidential. Some say that investigation records are discoverable and can be obtained through requests. Also, I recommend (e)(5) regarding 3204 be stricken. We don't want those records being turned over to everybody. If there's a compromise it would be access to a summary of the injuries, investigations and corrective measures. Further discussion should be conducted on what would be in the summaries.

Jane Thomason. We encourage the addition of interactive or in-person training requirements. In our experience when Cal/OSHA does not mandate that, a computer module training is administered while people are on shift and they have more than full-time jobs, so the training is not effective. We encourage language regarding interactive questions and answers with someone who is knowledgeable about the Plan. That has worked well in other standards. We encourage language for more frequent training. One-time training provided when people start work is not sufficient, particularly for procedures that are not used frequently.

Steve Frew. Regarding page two of three of the draft requirements, (c)(4+6) regarding retaliation against employees, and making a complaint without fear of reprisal. I doubt that there is anyone here that would disagree with those. Those are solid requirements. I disagree with some of the language on recordkeeping and those who can access records. Some records should not be available to everybody except for the general manager and human resources. Privacy and confidentiality are essential. Those

folks should provide high-level information such as how to avoid getting hurt, lessons learned, information that hits the high points but leaves out the details. That would be helpful, but anything more than that would be potentially harmful.

Meleah Hall. In special education they have a form for emergency intervention that they use to report to the state. It has a tally. Me and my coworkers would benefit by knowing the total numbers and would not need to know all the details. I agree that confidentiality is incredibly important, and that you can find out who it is based on dates. So I agree with confidentiality, but also it's incredibly important that we have the data so that we can reflect upon it.

Katherine Hughes. Regarding training, active involvement of employees and their representatives in developing the training would be awesome, and interactive questions and answers would be great too. In the spirit of compromise, it definitely has to be done by a person who is knowledgeable about the employer's Violence Prevention Plan. That should be spelled out. Training should include an explanation of the employer's Plan e.g. what's in the Plan, what hazards have been identified, and how employees would communicate concerns without fear of reprisal. The healthcare regulation under (f)(1)(A) should be in that training. Regarding recordkeeping, I believe it's important to track events to prevent injuries. Representatives should have access to those records, otherwise how will you track, complain and address it? Question to Eric Berg, when you said delete (e)(5), what did you mean? On the log in the healthcare regulation, no personal identifying information is allowed. We need access to some kind of records, otherwise we won't know how to address the problem. What happened, how it happened, but not who it happened to?

Eric Berg. I discussed deleting the reference to "in accordance with title 8 section 3204…" and replacing it with something like what is on the green sheet. Employers are concerned about information getting out that could be used against employees.

Meleah Hall. It's important for employees to be able to get access to the records. In my incident where I had amnesia from a head injury, my employers told me that 3204 did not apply to me because it was not a hazardous material etc. I complained to OSHA and still never got my records.

Eric Berg. Employees should have access to their own records for their own personal event, but then in general not everyone should have access. That is something we have to work on.

Juliann Sum. I am confused about (e)(5) which refers to 3204(e)(1) but doesn't it include the protections in 3204? This is the language that is in the already existing 3342.

Amalia Neidhardt. An employee must give a written consent for others to access the employee's own medical records. It's in the definition in 3204. It requires the employee's consent.

Eric Berg. Someone could get the incident investigation records which could identify the victim, so we need to clarify that.

Jim Dunnegan. Workplace violence, if recordable, would be recorded on the 300 log under other recordable illnesses. It would be something like stress, so it could be captured. The employer can easily give that information. So it is being tracked. Instead of a discrete workplace violence box to check off, it would be under all other illnesses.

Dan Leacox. Look at 3204(e) in this context. There are concerns about records being turned over that you would not want to expose for a number of reasons. (e)(5) doesn't refer to 3204(e), but rather 3204(e)(1). It includes a reference to designated representative and that would be a point of confusion. Then there is concern about are you expanding that to anyone the employee might designate? Outside of 3204(e)(1), it defines medical record, which is not every record created around the incident. It's a person's medical record, and it goes to lengths as to what those are. It includes a reference to designated representative as opposed to just a representative and that would be a point of confusion and concern about expanding to anybody. If you look elsewhere in 3204(e) outside of (e)(1), it defines a medical record and it does not include everything. It includes a form that gets filled out, because it's the employee coming and requesting the medical record.

Amalia Neidhardt. Eric Berg was saying to eliminate the wording in (e)(5) where it says 3204, and add the same green page. That's what he recommended.

Dan Leacox. Just eliminating personally identifiable information does not necessarily prevent the concerning consequences that might happen. If you're talking about an employer who had one or two, there's no hiding the ball at that point. I suggest you speak with some employment attorneys. You've heard these things are relegated to HR.

Elizabeth Treanor. There's an awful lot in "all records." If the employer has interviewed 15 people that saw the threat, there's a lot of information about a lot of other people in there and then there could be potential actions taken against that employee. So, what's in the investigation for one person may affect many others. The information during the investigation could have been made in confidence, so there's a concern that if you have access to records that include personnel actions taken against some employees, it makes it a much bigger universe regarding who is potentially affected. Could this potentially exacerbate the Type 3 or 4 violence?

Eric Berg. It says "all records required by this subsection" so it's only the records you are required to keep. But it's prefaced by "required by (e)."

Elizabeth Treanor. That is why we are asking for summaries to limit the confidential information. If you require "all records," there will be too much potentially confidential information and they would oppose.

Kevin Graulich We are at the end of the agenda. Does anyone want to say anything more? Please provide written comments by 3/1/18. We may be coming back for a future advisory committee meeting, or we could potentially go directly to formal rulemaking. However based on all the input; it will likely go to an additional advisory committee meeting. Thank you to everyone for your participation. Meeting adjourned.