

Workplace Violence Prevention in General Industry – Draft
Draft revisions compared to California Labor Code 6401.9

KEY

- Regular text is Labor Code 6401.9
- Single underlined text are proposed additions to Labor Code 6401.9 posted July 2024
- ~~Single strikeout text~~ are proposed deletions to Labor Code 6401.9 posted July 2024
- **Bold double underlined text** are proposed additions made during or after the January, 2025 advisory committee meeting
- ~~**Bold double strikeout** are proposed deletions made during or after the January, 2024 advisory committee meeting~~
- *Italic text in boxes is explanatory and not part of the proposal*

§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.

NOTE: This section does not limit the requirements under any Labor Code provision regarding employee rights or occupational safety and health.

The above informational note was added since all requirements related to implementing Labor Code sections 6311.5 and 1139 were deleted from subsection (c)(10) in response to comments.

- (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 ~~Section 3342 of title 8 of the California Code of Regulations.~~

EXCEPTION 2: Employers that comply with, ~~Section 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 ~~Section 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 that are not accessible to the public if the employer meets the following conditions:**

(A) **Has less than a total of 10 employees, and**

(B) **Is in compliance with section 3203.**

~~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 Section 3203 of Title 8 of the California Code of Regulations.~~

The phrase "at any given time" above from Labor Code 6401.9 creates an absurd result where a workplace could go back and forth with being covered or not by the regulation as employees come and go. The total number of employees on payroll is a more stable measurement.

Exception 6 does not apply to:

1. **Security services,**

2. **Janitorial services, and**

3. **Domestic workers who are "domestic work employees" pursuant to Labor Code section 1451.**

Addition above covers employees in certain industries that may not have public access are highly vulnerable to workplace violence based on the nature of the work or the location where the work takes place.

~~(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) **Authorized employee representative, for purposes of this section only, means an organization that has a collective bargaining relationship with an employer or an organization acknowledged by a public agency as representing its employees.**

- (2) “Emergency” means unanticipated circumstances that can be life-threatening or pose a risk of significant injuries to employees or other persons, requiring immediate action.
- (3) “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, Examples of~~ Examples of engineering controls include, as applicable, but are not limited to:
- (A) Electronic or mechanical access controls to employee occupied areas;
 - (B) Weapon detectors (installed or handheld);
 - (C) Enclosed workstations with shatter-, **smash-**, or **bullet-**resistant glass;
 - (D) Deep service counters;
 - (E) Spaces configured to optimize employee access to exits, escape routes, and alarms;
 - (F) Separate rooms or areas for high risk persons;
 - (G) Locks on doors;
 - (H) Furniture affixed to the floor;
 - (I) ~~Translucent-opaque~~ glass (protects privacy, but allows employees to see where potential risks are);
 - (J) ~~Improving lighting in dark areas, sight aids, improving visibility, and removing sight barriers~~ **Adequate lighting in dark areas, sight aids, visibility improvements, and removal of sight barriers;**
 - (K) Video monitoring and recording; and
 - (L) Personal and workplace alarms.

Added “examples of” and “as applicable” above to clarify that not all listed engineering controls are required to be implemented. Also, changed run-on paragraph to lettered list to make it easier to read.

- (4) “Log” means the violent incident log required by this section.
- (5) “Plan” means the workplace violence prevention plan required by this section.
- (6) “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.

NOTE: The employer is not responsible for employee’s texts, electronic messages, or personal social media that are not brought to the attention of the employer or that the employer could not otherwise be reasonably be aware of.

Above addition above made in response to comments

- (7) “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. **This includes the crime of stalking as defined in California Penal Code 646.9 that occurs at a place of employment, or in connection with a place of employment that are brought to the attention of the employer or that the employer could otherwise be reasonably be aware of.**

Addition above of "stalking" made in response to comments

- (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 for the purposes of this section are:**
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 pursuant to Penal Code sections 692 through 694.

Added Penal Code references above in response to comments on the need for clarification of these terms.

- (8) "Work practice controls" means procedures, ~~and~~ rules, ~~and~~ staffing which are used to effectively reduce workplace violence hazards. **Examples of ~~W~~work practice controls include, as applicable, but are not limited to:**

(A) Appropriate staffing levels;

(B) Provision of dedicated security personnel;

(C) An effective means to alert employees of the presence, location, and nature of a security threat;

(D) Control of visitor entry;

(E) Methods and procedures to prevent unauthorized firearms and weapons in the workplace;

- (F) Employee training on workplace violence prevention methods; and
(G) Employee training on procedures to follow in the event of a workplace violence incident or emergency.

Added “examples of” and “as applicable” above to clarify that not all listed work practice controls are required to be implemented. Also, changed run-on paragraph to lettered list to make it easier to read.

(9) Workplace violence hazards means workplace conditions that may increase the risk of a workplace violence incident at the workplace. Examples of workplace violence hazards include, as applicable, but are not limited to:

- (A) Employees working alone or in locations isolated from other employees;**
(B) Areas with poor illumination or blocked visibility (e.g. blind spots) of surrounding areas;
(C) Entries to places of employment where unauthorized access can occur;
(D) Work locations, areas, or operations that lack effective escape routes;
(E) Exchange of money or valuable goods;
(F) Frequent or regular contact with the public;
(G) Uncontrolled public access;
(H) Working late at night or early morning;
(I) Working with persons with a history of violence;
(J) Hostile work environments;
(K) Inadequate staffing;
(L) Lack of or inadequate security staffing;
(M) Required and excessive overtime;
(N) High crime areas as determined by local law enforcement, other governmental agency, or other non-governmental community crime maps, as applicable.
(O) Provide security services
(P) Selling, distributing, or providing alcohol, marijuana, or pharmaceutical drugs.

Moved this list above from subsection (c)(9) to subsection (b) definitions to clarify that these are possible workplace violence hazards that may be considered by employers. The change recognizes that some items listed may not be applicable to certain workplaces.

- (c) Workplace Violence Prevention Plan. An employer shall establish, implement, and maintain an effective workplace violence prevention plan (Plan). The 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 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 Plan may be incorporated as a stand-alone section in the written Injury and Illness Prevention Program required by ~~S~~section 3203 of Title 8 of the California Code of Regulations or maintained as a separate document. The Plan shall include all of the following:

- (1) Names or job titles of the persons responsible for implementing the pPlan. If there are multiple persons responsible for the pPlan, 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 pPlan, 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 subsection ~~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, evaluate, and respond to reports of workplace violence, including anonymous reports, and to prohibit retaliation against an employees and authorized employee representatives who makes such ~~a~~ reports.

Added "anonymous reports" above that was deleted from (c)(6)(A). Other additions were made in response to comments.

- (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 ensure that reports can be made: 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.

Above deleted text moved to (c)(4) and subsection (f) Recordkeeping

1. In a manner that does not discourage reporting.
2. To a designated person who is not a direct supervisor for type 3 violence.

Above additions made in response to comments

(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 representative concerns.~~

Above deleted text moved to subsection (f) Recordkeeping.

- (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 workplace violence 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~~

Above deleted text move to subsection (b) Definitions

~~(B) The employer shall maintain records of scheduled and periodic inspections.~~

Above deleted text moved to subsection (f) Recordkeeping

(10) Effective procedures to correct workplace violence hazards identified and evaluated in subsection (c)(9) ~~subparagraph (1)~~ 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) The employer shall not retaliate against an employee involved in a lawful act of self-defense or defense of others.

Added information on lawful self-defense and defense of others above in response to comments from Cal/OSHA Enforcement observing this type of retaliation and it being a problem.

~~(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.~~

Above deleted in response to comments. Added note to Subsection (a) Scope and Applications

~~(D) Employers shall keep a record of correction measures considered or implemented to address workplace violence hazards.~~

Subsection (c)(10)(D) above moved to subsection (f) Recordkeeping

(11) Effective ~~P~~rocedures for post-incident response and investigation including:

- (A) Ensuring provision of ~~Providing~~ immediate medical care or first aid to employees who ~~were have been~~ injured in the incident;
- (B) Identifying all employees and other persons (if possible) 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);~~

Above moved to subsection (f) Recordkeeping and simplified. Added "other persons (if possible)" in response to comments from Cal/OSHA Enforcement that non-employee witnesses provide critical information in certain events.

- (C) ~~For employers with more than 25 employees,~~ Offering or making available individual trauma counseling to employees affected by the incident upon request;

Note: trauma counselling offered to an employee through workers' compensation satisfies this requirement.

Above change made in response to comments. The employers only role is to offer services and is not responsible for diagnosis, prognosis, or treatment. Treatment offered through an employee assistance programs (EAPS) satisfies this requirement as well.

- (D) Conducting a post-incident debriefing as soon as possible after the incident with employees, supervisors, **other persons (if possible)**, and security involved in the incident;

Added "other persons (if possible)" above in response to comments from Cal/OSHA Enforcement that non-employee witnesses provide critical information in certain events.

- (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 **observations**~~opinions~~ regarding the cause of the incident, and whether any measure would have prevented the incident.

EXCEPTION: Employers are exempt from subsections (c)(11)(D) through (G) for involuntary or unintentional type 2 workplace violent incidents that are repetitive if all of the following conditions apply:

- 1. The employer has complied with subsections (c)(11)(D) through (G) for the initial incident;**
- 2. The incident did not cause or result in an injury or death;**
- 3. The incident did not involve the use of a firearm or other weapon; and**
- 4. All incidents are recorded on the violent incident log.**

Added exception above in response to comments from schools regarding situations specific to special needs education.

- ~~(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;**~~

Above deleted text moved to subsection (f) Recordkeeping and simplified.

- (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, **all elements of the 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.

Added "all elements of the plan" above in response to comments from Cal/OSHA Enforcement that employers are confused on whether or not that they have to cover all elements of the plan in their training.

(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 (**including but not limited to scheduled periodic inspections**), evaluation, and correction shall be created and maintained for a minimum of five years.

New text above covers information deleted from (c)(9)(B). The above also covers information deleted from (c)(10)(D).

(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) The employer shall create and maintain records for five years of:

(A) Reports of workplace violence threats, incidents, or workplace violence concerns made by employees, authorized employee representatives, or made anonymously pursuant to subsection (c)(4) and (c)(6)(A).

(B) Employer evaluations of reports made and corrective actions taken pursuant to subsections (c)(4) and (c)(6)(B) and information provided to employees and their designated representatives as defined in section 3204.

Above addition covers information deleted from (c)(6)(A) and (c)(6)(B)

(5) Records of workplace violence incident investigations conducted pursuant to **and containing all the information required by 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(i) ~~in subdivision (j) of Section 56.05 of the Civil Code.~~

Above recordkeeping covers information deleted from (c)(11)(H)

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

Above addition is necessary for Cal/OSHA to properly investigate workplace violence incidents.

Note: The Division will follow its procedures to keep personal identifying information confidential.

- (7) 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.