



Featured News

ALERT

**UPDATE - CALIFORNIA CREATES EXTENSIVE NEW
WORKPLACE VIOLENCE PREVENTION PLAN
REQUIREMENTS FOR EMPLOYERS**

UPDATE: Labor Code section 6401, requiring employers who are not exempt to establish and maintain a workplace violence prevention plan by no later than July 1, 2024, is now in effect. The Firm is developing prevention plans for its clients as needed. If you would like assistance in developing and implementing a prevention plan, please feel free to contact the Firm.

On September 30, 2023, Gov. Newsom signed into law Senate Bill 533. The bill requires employers (with limited exceptions) to establish, implement, and maintain an effective workplace violence prevention plan that includes specified information, training, and recordkeeping requirements. While employers were previously required to maintain illness and injury prevention programs, this new legislation (which will be codified as new Labor Code § 6401.9 within the Occupational Health and Safety chapter) imposes a unique additional set of obligations on employers.

1. Who Is Exempt?

The statute does not apply to:

- A. Employers who are already covered by Cal/OSHA's Violence Prevention In Health Care standard (*i.e.*, health care facilities generally);
- B. Department of Corrections and Rehabilitation employers and law enforcement agencies;
- C. Employees who work remotely from a location that is not within the employer's control; and
- D. Employers who have ten (10) or fewer employees working in a location that is not open to the public.



2. What Constitutes “Workplace Violence”?

The statute broadly defines “workplace violence” to mean “any act of violence or threat of violence that occurs in a place of employment.” It includes “the threat or use of physical force” that “results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, *regardless of whether the employee sustains an injury*” (emphasis added). In other words, a “threat” of physical force that does not actually result in injury can nevertheless be deemed an act of “workplace violence.”

3. What Does The Statute Require Employers To Do?

A. Establish, implement, and maintain an effective workplace violence prevention plan.

- 1) The plan must be in writing.
- 2) The plan must be available and accessible to employees.
- 3) The plan must be maintained either as a stand-alone plan or as part of a broader illness and injury prevention plan.
- 4) The plan must include the names and job titles of the persons responsible for implementing the plan.
- 5) The plan must include effective procedures for obtaining active involvement of employees in developing and implementing the plan, including procedures for employee involvement in identifying and correcting workplace violence hazards; designing and implementing training; coordinating with staffing agencies and other co-employers; and reporting and investigating workplace violence incidents.
- 6) The plan must include the employer’s methods and procedures for providing training; accepting and investigating reports; communicating with employees; and prohibiting retaliation against any employee who reports workplace violence.
- 7) The plan must include effective procedures for responding to workplace violence emergencies, including notification, evacuation, and sheltering plans.
- 8) The plan must include a process for periodically reviewing and revising the plan as needed.

B. Record information on every workplace violence incident and investigation in a violent incident log that must be maintained for five (5) years.

- 1) The log must omit any personal identifying information that would allow identification of any person involved in a violent incident.
- 2) The log must include the date, time, and location of the incident.
- 3) The log must note whether the perpetrator was an employee, customer/client, partner/spouse, parent/relative, stranger, or other perpetrator.
- 4) The log must include a detailed description of the incident.
- 5) The log must note the circumstances at the time of the incident.
- 6) The log must detail the type of incident that occurred (*i.e.*, physical attack, threat of attack, sexual assault, animal attack, or other).
- 7) The log must note the response (if any) to the attack, including actions by law enforcement and/or security, and actions taken to protect employees from any ongoing threat.

C. Provide effective training to employees regarding the plan, using materials that are appropriate in content and vocabulary to the educational level, literacy, and language of the employees. Employers must provide the training when the plan is initially implemented, and annually

thereafter. The training must include:

- 1) How to obtain a copy of the plan;
- 2) How to participate in the implementation and development of the plan;
- 3) The statutory requirements;
- 4) How to report workplace violence;
- 5) The violence hazards specific to the particular workplace;
- 6) The specific corrective measures the employer has instituted;
- 7) How to seek assistance in responding to or avoiding workplace violence;
- 8) How to avoid physical harm;
- 9) How to obtain copies of incident logs and other records; and
- 10) An opportunity to ask questions of and obtain information from a person knowledgeable about the plan.

Additional training is required when changes are made to the plan, or when new hazards are identified. The additional training may be limited to covering the new information.

Employers are required to maintain records of training for a minimum of one (1) year. The records must include dates; summaries of contents; names and qualifications of persons conducting the training; and names and job titles of attendees.

4. What Are The Penalties For Non-Compliance?

The statute authorizes the California Department of Industrial Relations Division of Occupational Safety and Health to enforce this section by means of the issuance of citations and civil penalties. A “serious” violation may be punished as a misdemeanor and is enforceable against officers, managers, and supervisors having direction, management, and/or custody of employees or the workplace. The statute allows for the appeal of any imposed citation or penalty. It does not provide for any private right of action. Employers should confirm whether or not their existing Employers’ Liability and/or General and Commercial Liability policies provide coverage for claims involving workplace violence. Of note, many of these types of policies contain exclusions for criminal acts.

5. Will Cal/OSHA Create A Model Plan?

SB 533 requires OSHA to propose standards regarding the plan required by the bill, and for the OSHA standards board to adopt such standards. The catch is that OSHA’s deadline for proposing plan standards is December 1, 2025, and the deadline for adoption of these standards is December 31, 2026. Both dates are well beyond the contemplated implemental date of July 1, 2024. It is reasonable to assume that OSHA will provide guidance in advance of the implementation date.

If you have any additional questions or comments related to the Senate Bill 533 law, please do not hesitate to contact our office.

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