



SPECIAL REPORT

CALIFORNIA IMPOSES NEW WORKPLACE VIOLENCE PREVENTION MANDATE

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TABLE OF CONTENTS

3	Introduction
4	In Depth
4	Preparation of and Required Updates to WVPP Policies
5	Annual WVPP Training
6	WVPP Recordkeeping Requirements
7	Workplace Violence Restraining Order
8	Practical Considerations

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INTRODUCTION

On September 30, 2023, California Governor Gavin Newsom signed SB 553 into law, creating a new layer to California employers' existing injury and illness prevention programs (IIPP). Under SB 553, employers are required to implement a workplace violence prevention plan (WVPP) no later than July 1, 2024, to provide training to employees regarding the WVPP and to keep records of workplace violence incidents. As of January 1, 2025, the law also expands employers' and employee representatives' rights to obtain restraining orders on behalf of employees affected by threats of workplace violence.

IN DEPTH

SB 553 applies to employers with at least one employee subject to the following exceptions:

- (1) Employees teleworking from a location of their choice;
- (2) Workplaces with fewer than 10 employees working at any given time that are inaccessible to the public;
- (3) Healthcare facilities operating under the Division of Occupational Safety and Health of California's (Cal/OSHA) Violence Prevention in Health Care regulations; or
- (4) Law enforcement agencies.

By July 1, 2024, covered employers must develop a compliant WVPP made up of three essential parts: policies, trainings and recordkeeping.

1. PREPARATION OF AND REQUIRED UPDATES TO WVPP POLICIES

First, an employer's WVPP written policy must include the names or job titles of the persons responsible for implementing the plan. If multiple people are responsible, their roles must be clearly described.

Second, the plan must include procedures that:

- 1) Require the active involvement of employees and authorized employee representatives in the WVPP's development and implementation, including:
 - Identifying, evaluating and correcting workplace violence hazards;
 - Designing and implementing trainings; and,
 - Reporting and investigating workplace violence incidents.
- 2) Explain how the employer will accept and respond to reports of workplace violence.
- 3) Prohibit retaliation against an employee who makes a report of workplace violence.
- 4) Ensure that supervisory and nonsupervisory employees comply with the plan in a manner consistent with the employer's existing IIPP (such as recognition of employees who follow safe and healthful work practices, training and retraining programs, or disciplinary actions).
- 5) Provide for communication with employees regarding workplace violence matters, including **both** of the following: (i) how employees can report workplace violence to the employer or to law enforcement without fear of retaliation and (ii) how employee concerns will be investigated and how employers will inform employees of investigation results and its corrective action.
- 6) Explain how to respond to workplace violence emergencies, including:
 - The means employers will use to alert employees of the presence, location and nature of the workplace violence emergency;
 - Evacuation or sheltering plans that are appropriate and feasible for the worksite; and
 - How to obtain help from staff assigned to respond to workplace violence emergencies, security personnel or law enforcement.
- 7) Provide for identification and evaluation of workplace violence hazards, including scheduled periodic inspections. These inspections should be conducted when the plan is first established, after

each workplace violence incident and when the employer is made aware of a new hazard.

- 8) Correct workplace violence hazards in a timely manner, consistent with the employer's existing IIPP (*i.e.*, when the hazard is observed or discovered).
- 9) Provide for post-incident response and investigation.
- 10) Explain the methods the employer will use to:
 - Coordinate implementation of the plan with other employers, when applicable;
 - Ensure that those employers and employees understand their respective roles, as provided for in the plan;
 - Ensure that all employees are provided with the required training; and,
 - Ensure that workplace violence incidents involving any employee are reported, investigated and recorded.
- 11) Develop and provide the required training.
- 12) Provide for the review of the plan's effectiveness and plan revisions as needed.
 - Employees and authorized employee representatives should be actively involved in reviewing the plan.
 - The plan (and the violent incident log described below) must be reviewed at least annually, when a deficiency is observed or becomes apparent, and after a workplace violence incident.

Other required procedures are currently still in development. Cal/OSHA must propose applicable standards for employers' WVPPs by December 31, 2025, to be adopted by the standards board no later than

December 31, 2026. Notably, this deadline comes after employers' July 1, 2024, deadline to establish a WVPP.

2. ANNUAL WVPP TRAINING

Employers must provide employees with initial training on the WVPP when the plan is first established and annually thereafter. The training must include all of the following:

1. The employer's plan, how to obtain a copy of the employer's plan at no cost, and how to participate in development and implementation of the employer's plan.
2. The definitions and requirements of SB 553.
3. How to report workplace violence incidents or concerns to the employer or law enforcement without fear of retaliation.
4. 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.
5. The violent incident log (described below) and how to obtain copies of records.
6. An opportunity for interactive questions and answers with a person knowledgeable about the WVPP.

Employers must also provide additional training 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.

Employers must keep training records that include training dates, training content or a summary of the

training sessions, the names and qualifications of the persons conducting the trainings, and the names and job titles of everyone who attends the training sessions.

3. WVPP RECORDKEEPING REQUIREMENTS

As part of the WVPP, employers must record information in a “violent incident log” for every workplace violence incident. SB 553 defines “workplace violence” as any act of violence or threat of violence that occurs in a place of employment, including the threat or use of physical force against an employee, or an incident involving a threat or use of a firearm or other dangerous weapon. Actual injury is not required. However, workplace violence does *not* include a lawful act of self-defense or defense of others.

Information recorded in the log should be based on information collected from the employees who experienced the workplace violence incident, witness statements and investigation findings. However, the log should *not* include personal identifying information of any person involved in a violent incident, such as the person’s name, address, email address, telephone number, social security number or other information that could reveal the person’s identity.

Employers at multiemployer worksites whose employees experienced the workplace violence incident must record the information in and provide a copy of that log to the controlling employer.

The information recorded in the log must include the following nine categories of information:

1. The date, time and location of the incident.
2. The workplace violence type or types (as outlined in the chart below).
3. A detailed description of the incident.
4. A classification of who committed the violence, such as whether the perpetrator was a coworker, supervisor, manager, partner, spouse, client, customer or a stranger.
5. A classification of circumstances at the time of the incident, such as if 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.
6. A classification of where the incident occurred, such as in the workplace, parking lot or other area outside the workplace, or other area.
7. The type of incident, including, but not limited to, whether it involved a physical attack without a weapon, an attack with a weapon, a threat of physical force, sexual assault, a threat of sexual assault or an animal attack.
8. The consequences of the incident, including whether security or law enforcement was contacted, their response and any other actions taken to protect employees.
9. Information about the person completing the log, including their name, job title and the date completed.

Chart of Workplace Violence Types Pursuant to Cal. Lab. Code §6401.9

Violence Type	Definition
1	Workplace violence committed by a person who has no legitimate business at the worksite. Includes violent acts by anyone who enters the workplace or approaches workers with the intent to commit a crime.
2	Workplace violence directed at employees by customers, clients, patients, students, inmates or visitors.
3	Workplace violence against an employee by a present or former employee, supervisor or manager.
4	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.

Finally, SB 553 requires that employers retain records related to their WVPP. For a minimum of five years, employers must maintain: (1) violent incident logs, (2) records of workplace violence hazard identification, (3) evaluation and correction records, and (4) investigation records related to workplace violence incidents (except these should not contain private medical information).

For a minimum of one year, employers must retain training records. However, all records must be made available to Cal/OSHA upon request for examination and copying.

Violent incident logs, hazard assessment records and training records must be made available to employees and their representatives for examination and copying within 15 calendar days of a request. If employers fail to comply, the division will issue a citation and a notice of civil penalty of \$5,000 to \$150,000, based on the severity of the violation, in accordance with Cal. Lab. Code § 6317.

WORKPLACE VIOLENCE RESTRAINING ORDER

SB 553 also expands the rights of employers and employee representatives to obtain restraining orders to protect against workplace violence.

Current law permits employers to seek a temporary restraining order (TRO) on behalf of an employee who has suffered unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried out, or have been carried out, at the workplace.

Effective January 1, 2025, SB 553 will also authorize the employee’s collective bargaining representative to do the same. Employees must have an opportunity to decline to be named in the TRO. New under this law, declining to name an employee in the request for a TRO will not prevent an employer or collective bargaining representative from seeking a TRO on the employee’s behalf, or even on behalf of other employees at other workplaces of the employer, if appropriate.

Additionally, SB 553 allows petitioners to request TROs for incidents of harassment, in addition to incidents of violence as they were previously limited. Currently, petitioners can file a declaration to support their request for a TRO that shows by reasonable proof that an employee (1) suffered unlawful violence or a credible threat of violence by the respondent and (2) a great or irreparable harm would result to the employee. Starting next year, petitioners will also be able to file a declaration that shows by clear and convincing evidence that (1) an employee has suffered harassment by the respondent; (2) great or irreparable harm would result to an employee; (3) the course of conduct at issue served no legitimate purpose; and (4) the issuance of the order is not prohibited by subsection (c) of the new law, which prohibits courts from issuing TROs that prohibit speech protected by the US Constitution, the National Labor Relations Act and similar state law statutes.

The new law defines harassment as “a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress.”

Finally, the law provides that the Judicial Council will prepare and develop forms that conform to the new instructions and standards provided in this subsection.

PRACTICAL CONSIDERATIONS

The WVPP can be either incorporated into an employer’s existing written IIPP as a stand-alone section or maintained as a separate document for easier access, implementation and modification.

Employers in certain industries will have special considerations in developing their WVPPs.

The Healthcare Industry

- Healthcare facilities currently operating under Cal/OSHA’s Violence Prevention in Health Care regulations are exempt from the requirements of SB 533. Exempted healthcare facilities include home healthcare and home-based hospice, emergency medical services and medical transport, drug treatment programs, outpatient medical services to the incarcerated in correctional and detention settings, and other healthcare facilities as defined by Section 3342(b) of Title 8 of the California Code of Regulations.
- Nonexempt healthcare facilities and other healthcare-related entities, such as certain outpatient clinics, long-term care facilities, mental healthcare providers in inpatient facilities and social welfare service providers, may recognize that their employees experience Type 2 events regularly from patients, relative of patients and other clients. These employers should take special care in implementing an efficient process for documenting such incidents for their violent incident log, as well as build in triggers that warn the employer if they might need to provide additional training to their employees, as required by the new regulations when a new workplace hazard is identified.

The Motion Picture Industry

- Since SB 533 will allow collective bargaining representatives to file petitions for temporary restraining orders on behalf of any affected employee, employers with large numbers of unionized employees should consider incorporating procedures for open communication with collective bargaining representatives into their WVPP as soon as possible. Although this provision of the statute does not become effective until January 1, 2025, creating established methods of communication now will allow employers and unions to cooperate effectively if an affected employee wishes to file a petition for a temporary restraining order through a bargaining representative in the future.

The Retail Industry

- Employers in the retail industry should note that Type 2 Workplace Violence includes violence committed by customers, and the law provides very broad definitions of “workplace violence” and “threats of violence.” Thus, the law may bring some instances of petty theft or similar occurrences into the ambit of an employer’s WVPP, triggering training and recordkeeping requirements.

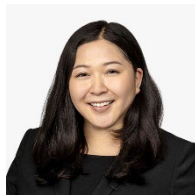
For assistance in developing your industry-specific workplace violence prevention plan, training or obtaining a workplace violence restraining order, please contact McDermott’s Employment Practice Group.

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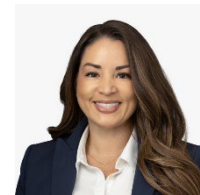
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