



## FLOOR ALERT

May 22, 2023

TO: Members, California State Senate

**SUBJECT: SB 553 (CORTESE) OCCUPATIONAL SAFETY: WORKPLACE VIOLENCE: RESTRAINING ORDERS AND WORKPLACE VIOLENCE PREVENTION PLAN OPPOSE – AS AMENDED APRIL 17, 2023**

The California Chamber of Commerce and the undersigned respectfully **OPPOSE SB 553 (Cortese)** as amended April 17, 2023, as it would interrupt an ongoing regulatory process and create wasteful obligations for all employers – regardless of size – that will not prevent workplace violence.

As an initial matter, we want to be clear about what in **SB 533** we do not oppose: allowing collective bargaining representatives to seek workplace violence restraining orders on behalf of their members.<sup>1</sup> This change is reasonable to ensure that workers who want to seek a workplace violence restraining order – but do not know how to do so or struggle with language issues – can seek help from their union in doing so. However, we are strongly opposed to the remaining portions of **SB 533**, which would short-circuit an ongoing regulatory process for unclear reasons, create wasteful recordkeeping obligations, and overreach into simple verbal disputes, all without improving safety.

<sup>1</sup> This change is broadly contained in Section 1 of the bill, particularly under proposed Section 527.8.

## **Context: Cal/OSHA is Working on a General Industry Workplace Violence Regulation.**

The California Division of Occupational Safety and Health (Cal/OSHA) worked with stakeholders and created a workplace violence regulation focused on healthcare settings that went into effect in April of 2017 (the “Healthcare WV Standard”).<sup>2</sup> The Healthcare WV Standard was the product of intense discussions between hospitals, advocates, and Cal/OSHA regarding what was feasible for healthcare workplaces. Ultimately, the resulting standard compelled hospitals to log and record violent incidents, implement increased training, lengthy annual reviews of all prior events and their processes, and provide individual counseling. No other industries were involved in the discussions.

After the completion of the Healthcare WV Standard, Cal/OSHA began work on a broad, multi-industry workplace violence regulation (“Draft Multi-Industry Standard.”), and convened meetings with stakeholders<sup>3</sup> to discuss the difficult task of how to apply similar obligations to employers across all industries and settings.<sup>4</sup> This process was paused when Cal/OSHA urgently focused on an emergency wildfire smoke regulation in 2018/2019<sup>5</sup>, and again while Cal/OSHA was drafting/revising the state’s COVID-19 regulation from 2020-2022. With these interruptions done, Cal/OSHA has re-commenced its process on its Draft Multi-Industry Standard and will be meeting with stakeholders this Summer with a new draft version of its text.

## **SB 553 Ignores the Lessons of the Regulatory Process and Copies an Inapplicable Standard.**

**SB 553** purports to be an attempt to accelerate the multi-industry regulatory process – but it does not build on the language from the most recent Cal/OSHA draft of the Draft Multi-Industry Standard. Instead, **SB 553** copies the provisions of the Healthcare WV Standard, which was designed for a relatively small group of well-resourced, technologically advanced employers.

This choice is bizarre, as the entire reason for Cal/OSHA’s regulatory process was a recognition that hospitals are not the same as the majority of businesses in California. On the whole, hospitals are centralized (in one building or closely grouped structures), with highly-trained and educated staff, distinct entrance/exit points, and have well-developed administrative and legal teams. In addition, hospitals’ financial resources are far beyond most workplaces. Consider a small business, such as a restaurant, with 8 employees – and compare that to a hospital. Obviously, there are vastly different capabilities between the two. Or a plumbing business – where employees routinely travel to different locations as part of work, and work alone. Or a tourism business providing tours of the California’s wilderness. In short, hospitals simply are not the average employer in California – which is why Cal/OSHA has been working through a regulatory process to modify the standard to make sense for all workplaces in the state.

**SB 553** ignores Cal/OSHA’s recent process, and would write the Healthcare WV Standard into the Labor Code. Because this standard was not written with the majority of California’s businesses in mind<sup>6</sup> (as Cal/OSHA recognized), we must oppose **SB 553’s** attempt to subvert an ongoing regulatory process.

## **SB 553 Re-Writes Cal/OSHA’s Work to Turn Harassment (a Labor Law Issue) into Workplace Violence.**

In fact, **SB 553** even goes beyond the Healthcare WV Standard in what it considers “workplace violence” and reaches into the domain of labor law and the Civil Rights Department (CRD). Both the Healthcare WV Standard and the Draft Multi-Industry Standard define workplace violence similarly:

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<sup>2</sup> See Title 8, Section 3342. Background information on the healthcare standard, including text, is available at: <https://www.dir.ca.gov/dosh/workplace-violence-prevention-in-healthcare.html>. The present Healthcare WV Standard is available at: <https://www.dir.ca.gov/Title8/3342.html>.

<sup>3</sup> The ongoing process for the multi-industry group (including Cal/OSHA’s most recent draft text) can be viewed at <https://www.dir.ca.gov/dosh/doshreg/Workplace-Violence-in-General-Industry/>.

<sup>4</sup> Hospitals are, compared to the vast majority of businesses in California, more well-resourced and staffed, and therefore more able to absorb new obligations for training and recordkeeping.

<sup>5</sup> The wildfire smoke standard was first passed as an emergency regulation in mid-2019 and was made permanent in February of 2021.

<sup>6</sup> In fact, no businesses except hospitals were even involved in Cal/OSHA’s stakeholder advisory committee process to draft the Healthcare WV Standard.

“Workplace violence” means any act of violence or threat of violence that occurs at the work site. The term workplace violence shall not include lawful acts of self-defense or defense of others. Workplace violence includes the following:

- (A) The threat or use of physical force against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury;
- (B) An incident involving the 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.

These regulations define workplace violence as actual violence, a threat of violence, or an incident involving a dangerous weapon. **SB 553** does not follow that definition. Instead, **SB 553** adds a new category:

“Conduct that alarms, annoys, or harasses an employee ... and has a high likelihood of resulting in psychological trauma or stress ... including verbal harassment based ... on [a protected characteristic].”<sup>7</sup>

It appears this definition was taken from labor law regarding “harassment” - which is handled by another agency (the Civil Rights Department, formerly the Department of Fair Employment and Housing). In the labor law context, harassment has its own set of interpretative case law and procedures to resolve ... which Cal/OSHA inspectors have no experience in. It just does not make sense to take workplace harassment and shove Cal/OSHA into enforcement, when the CRD is experienced in workplace harassment claims.

Moreover, it makes even less sense to do so in this workplace violence regulation because inappropriate comments is not workplace violence. Functionally, treating “harassment” as “violence” will require employers across the state to write an exhaustive summary of every time a racial or sexist comment is made in the workplace ... regardless of whether there is violence of even a threat of violence. For example – imagine how many times such reports would need to be written in bars across California based on conduct that “annoys” an employee and causes “stress”. And now imagine writing a report for each such comment. These reports will not make any workplace safer, but will waste both public and private employers time. In addition, they are the Civil Rights Department’s skillset – not Cal/OSHA safety inspectors’ skillset.

### **SB 553 Will Not Prevent Any Workplace Violence.**

**SB 553** will not actually prevent any workplace violence, so there is no urgency to supersede Cal/OSHA’s ongoing work. Substantively, **SB 553** does not change the realities around workplace violence – namely, that it is a criminal matter that employers are not well-equipped to prevent. An active shooter entering a workplace – while tragic – is not something most businesses (or public entities) are ever going to be equipped to handle. This legislation will not summon armed guards to every retail establishment in the state, or improve police response times, or prevent oral threats from being spoken. Instead, it will, at its core, require businesses to keep more records of these events. While we do not dispute that recordkeeping can be an important part of justice – and certainly many regulations require records be kept – that is not a reason to supersede Cal/OSHA’s ongoing work on this issue. California can afford to get this regulation right via the Cal/OSHA process.

### **SB 553 Will Create Considerable Costs for State Departments in Compliance Obligations.**

**SB 553’s** compliance obligations apply to state agencies and are by no means trivial – to the contrary, **SB 553** will require training, recordkeeping, and additional staff to “prevent and respond to workplace violence events during each shift” (and they are not considered available if they have other assignments that prevent them from “immediately” responding). This includes hiring security personnel<sup>8</sup> as well as engineering controls<sup>9</sup> and trauma counseling whenever speech that “annoys” an employee occurs.<sup>10</sup> These costs are

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<sup>7</sup> See proposed Section 6401.9(a)(7)(B).

<sup>8</sup> Section 6401.9(b)(10)(D) “Maintaining sufficient staffing, including security personnel, who can maintain order in the facility and respond to workplace violence incidents in a timely manner.”

<sup>9</sup> Section 6409.5 (b)(10)(E).

<sup>10</sup> Section 6409.5(b)(11)(C)

significant – particularly when the trigger for the employer’s obligations is not limited to actual violence - but includes even harassing or annoying speech.<sup>11</sup>

While we certainly support (and are working as part of) Cal/OSHA’s ongoing process to create a workable multi-industry workplace violence standard, **SB 553** does not advance that effort. Instead, it short-circuits that effort and treats all employers like hospitals. For these reasons we **OPPOSE SB 553 (Cortese)**.

Sincerely,



Robert Moutrie  
Policy Advocate  
on behalf of

Acclamation Insurance Management Services  
Agricultural Council of California  
Allied Managed Care  
American Council of Engineering Companies,  
California  
American Pistachio Growers  
Associated General Contractors of California  
Associated General Contractors, San Diego  
Associated Roofing Contractors  
California Apartment Association  
California Association of Sheet Metal and Air  
Conditioning Contractors, National Association  
California Association of Winegrape Growers  
California Attractions and Parks Association  
California Beer and Beverage Distributors  
California Builders Alliance  
California Building Industry Association  
California Business Roundtable  
California Chamber of Commerce  
California Cotton Ginners and Growers  
Association  
California Craft Brewers Association  
California Distributors Association  
California Farm Bureau  
California Framing Contractors Association  
California Fresh Fruit Association  
California Grocers Association  
California Hispanic Chambers of Commerce  
California Hotel & Lodging Association  
California Independent Petroleum Association

California Landscape Contractors Association  
California League of Food Producers  
California Manufacturers & Technology  
Association  
California Pool & Spa Association  
California Restaurant Association  
California Retailers Association  
California State Council of the Society for  
Human Resource Management (CalSHRM)  
California Travel Association  
California Trucking Association  
Coalition of Small and Disabled Veteran  
Businesses  
Construction Employers’ Association  
Far West Equipment Dealers Association  
Flasher Barricade Association  
Housing Contractors of California  
Independent Insurance Agents & Brokers of  
California  
National Association of Theatre Owners of CA  
National Federation of Independent Business  
Nisei Farmers League  
Official Police Garages of Los Angeles  
Plant California Alliance  
Residential Contractors Association  
Resource Recovery Coalition of California  
Western Agricultural Processors Association  
Western Electrical Contractors Association  
Western Steel Council

cc: Legislative Affairs, Office of the Governor  
Steve Dorsey, Office of Senator Cortese  
Alma Perez-Schwab, Consultant, Senate Labor, Public Employment and Retirement Committee  
Cory Botts, Consultant, Senate Republican Caucus  
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RM:ldl

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<sup>11</sup> Section 6409.5 (a)(8)(B) “Workplace violence means ... (B) Conduct that seriously alarms, annoys, or harasses an employee, that serves no legitimate purpose, and that has a high likelihood of resulting in psychological trauma or stress, ...”