



April 5, 2023

TO: Members, Senate Labor, Public Employment and Retirement Committee

SUBJECT: SB 553 (CORTESE) OCCUPATIONAL SAFETY: WORKPLACE VIOLENCE: RESTRAINING ORDERS AND WORKPLACE VIOLENCE PREVENTION PLAN OPPOSE – AS AMENDED MARCH 28, 2023 SCHEDULED FOR HEARING – APRIL 12, 2023

The California Chamber of Commerce and the undersigned respectfully **OPPOSE SB 553 (Cortese)** as amended March 28, 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.¹ 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.

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”).² 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, as well as implement increased training and ongoing review of their own practices. No other industries were involved in the discussions.

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

² 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>.

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 stakeholders³ to discuss the difficult task of how to apply similar obligations to employers across all industries and settings.⁴ This process was paused when Cal/OSHA urgently focused on an emergency wildfire smoke regulation in 2018/2019⁵, and again while Cal/OSHA was drafting/revising the state’s COVID-19 regulation from 2020-2022. With these interruptions out of the way, Cal/OSHA has re-commenced its process on its Draft Multi-Industry Standard and will be meeting with stakeholders in the Summer of 2023 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 – rather than impose a one-size-fits all standard as **SB 553** does.

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 mind⁶ (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:

“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.

³ 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/>.

⁴ 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.

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

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

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]."⁷

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 handling 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, and are properly the domain of CRD to handle – not Cal/OSHA.

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 – and doesn't need to pass **SB 553** when it will not prevent any violence or improve workplace safety.

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** simply 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, Dominic Russo
Allied Managed Care, Dominic Russo
American Pistachio Growers, Richard Matoian
Associated Roofing Contractors, Steve Johnson
California Association of Sheet Metal and Air Conditioning Contractors,
National Association, Emily Mills

⁷ See proposed Section 6401.9(a)(7)(B).

California Chamber of Commerce, Robert Moutrie
California Cotton Ginners and Growers Association, Roger Isom
California Craft Brewers Association, Chris Walker
California Farm Bureau, Bryan Little
California Framing Contractors Association, Kevin Bland
California Fresh Fruit Association, Ian LeMay
California Grocers Association, Louie A. Brown, Jr.
California League of Food Producers, Ben Ebbink
California Restaurant Association, Katie Davey
California Retailers Association, Sarah Pollo Moo
Coalition of Small and Disabled Veteran Businesses, Jeffrey Langlois
Construction Employers' Association, Cindy Sato
Far West Equipment Dealers Association, Joani Woelfel
Flasher Barricade Association, Kenneth Johnston
Housing Contractors of California, Bruce Wick
National Federation of Independent Business, Tim Taylor
Nisei Farmers League, Manuel Cunha, Jr.
Official Police Garages of Los Angeles, Chris Micheli
Plant California Alliance, Chris Zanobini
Residential Contractors Association, Kevin Bland
Western Agricultural Processors Association, Roger Isom
Western Electrical Contractors Association, Richard Markuson
Western Steel Council, Kevin Bland

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RM:ldl