

Employment & Labor Law Alert

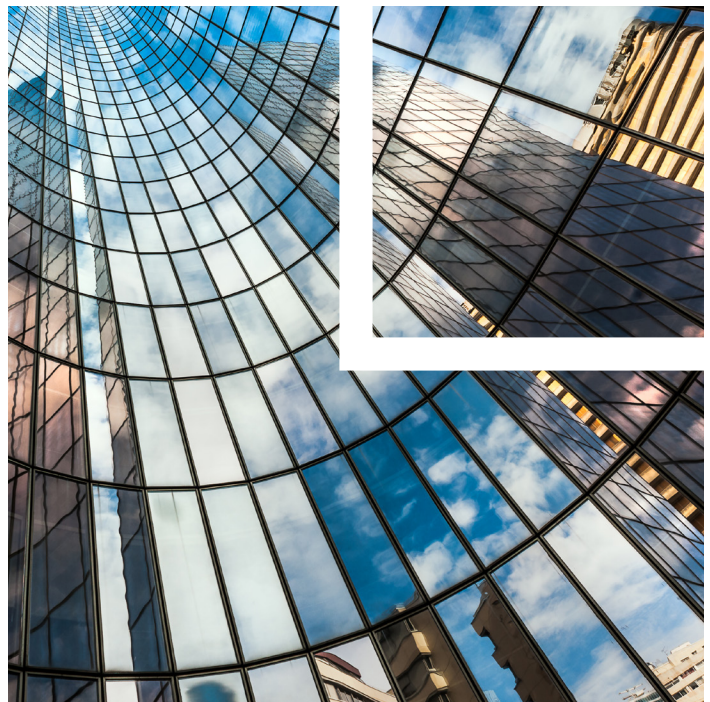
December 2023

New Employer Requirement to Implement Workplace Violence Prevention Plans

Gov. Gavin Newsom recently signed Senate Bill 553, which includes specific requirements regarding workplace violence prevention plans. The bill takes effect July 1, 2024, and will be enforced by the Division of Occupational Safety and Health within the Department of Industrial Relations.

Senate Bill 553

- Establish, implement and maintain, at all times in all work areas, an effective written workplace violence prevention plan as a separate document or as a stand-alone section of the employer's Injury and Illness Prevention Plan.
- Provide effective training to employees.
- Create and maintain a number of workplace records surrounding their workplace violence prevention plan.
- Workplace violence is defined, under the bill, as any act of violence or threat of violence that occurs in a place of employment, including the threat or use of physical force, with or without firearms or other dangerous weapons, against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma or stress. This is true regardless of whether the employee actually sustains an injury. It also includes a number of specific workplace violence types:
 - Violence committed by a person who has no legitimate business at the worksite, including violent acts by anyone who enters the workplace or approaches workers with the intent to commit a crime.
 - Violence directed at employees by customers, clients, patients, students, inmates or visitors.



- Violence against an employee by a present or former employee, supervisor or manager.
- 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.

Senate Bill 553 applies to all employers, employees and places of employment except:

- Employees teleworking from a location of the employee's choice that is not under the control of the employer.
- Employment locations with less than 10 employees working at any given time and that are not accessible to the public.
- Employers covered under the violence in health care section of the California Code of Regulations.
- Facilities operated by the Department of Corrections and Rehabilitation and law enforcement agencies.

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Senate Bill 553 also includes changes to temporary restraining orders (TROs). Existing law authorizes any employer whose employee has suffered unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried out, or to have been carried out, at the workplace to seek a TRO and an order after hearing on behalf of the employee and other employees at the workplace.

However, beginning Jan. 1, 2025, Senate Bill 553 would also authorize a collective bargaining representative of an employee to seek a TRO and an order after a hearing on behalf of the employee and other employees at the workplace. Further, under the bill, an employee's request to not be named in the TRO would not prohibit an employer or collective bargaining representative from seeking a TRO on behalf of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

Workplace Violence Prevention Plan Requirements

- Designated persons responsible for implementing the plan.
- Procedures to obtain active employee involvement in developing and implementing the plan.
- Methods to coordinate implementation of the plan with other employers, when applicable.
- Procedures for the employer to accept and respond to reports of workplace violence and to prohibit retaliation against an employee who makes such a report.
- Procedures to ensure that supervisory and nonsupervisory employees comply with the plan.
- Procedures to communicate with employees regarding workplace violence matters, including how to report a violent incident, threat or other workplace violence concern, and how employee concerns will be investigated as well as how employees will be informed of the results of the investigation and if any corrective actions will be taken.
- Procedures to respond to actual or potential workplace violence emergencies, including effective means to alert employees of the presence, location and nature of workplace violence emergencies;

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, if any; security personnel, if any; and law enforcement.

- Procedures to develop and provide training.
- Procedures to identify and evaluate workplace violence hazards, including scheduled periodic inspections to identify unsafe conditions and work practices and employee reports and concerns. **Note:** Inspections should be conducted when the plan is first established, after each workplace violence incident, and whenever the employer is made aware of a new or previously unrecognized hazard.
- Procedures to identify and correct workplace violence hazards in a timely manner.
- Procedures for post-incident response and investigation.
- Procedures to review the effectiveness of the plan and revise the plan as needed, at least annually, or when a deficiency is observed or becomes apparent, and after a workplace violence incident.

Employee Training Requirements

An employer must provide effective training to employees with training materials appropriate in content and vocabulary to the educational level, literacy and language of employees when the plan is first established, and annually thereafter, on the following:

- 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.
- How to report workplace violence incidents or concerns to the employer or to law enforcement without fear of reprisal.
- 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.
- Access to a person knowledgeable about the plan for questions and copies of records.

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.

Recordkeeping Requirements Include

- Records of workplace violence hazard identification, evaluation and correction.
- Violent incident logs.
- Training records.
- Records of workplace violence incident investigations.

The records shall be created and maintained for a minimum of five years and available to the Division of Occupational Safety and Health upon request.

Action Items for Employers

- Before July 1, 2024, strategize with management and other relevant team members to create a compliant workplace violence program/plan and determine whether it will be a separate document or a stand-alone section of their existing Injury and Illness Prevention Plan.
- Update any workplace violence TRO procedures to be compliant before Jan. 1, 2025.

Related Professionals

Michelle La Mar mlamar@loeb.com
Sarina Saluja ssaluja@loeb.com
Kimberly Stallworth kstallworth@loeb.com

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