

Workplace Violence—Beyond the General Duty Clause

California Industrial Hygiene Association
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Half Moon Bay Mass Shooting (2023)

7 fatalities, 2 locations, mushroom farms

Perpetrator

- Disgruntled farmworker
- Claimed he was bullied by co-workers & exploited by employers
- Prior history of threatening violence: restraining order

Investigation: toxic work culture

- The farm failed to provide a safe workplace
- Exploited workers
- Unsanitary housing conditions

California hit by back-to-back shootings

Seven people were shot dead south of San Francisco in the second mass shooting in California in three days



- Workplace Violence is a psychosocial stressor
- AIHA WV Technical Committee
- Federal Workplace Violence Prevention Standard
- Workplace Violence Prevention in all worksite risk assessments

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Before shots are fired: The occupational health and safety professional's role in addressing active shooter and violent threats in the workplace

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ABSTRACT
This article examines active shooters and mass shootings and their implications for occupational health and safety professionals as they relate to industrial hygiene and public health. The article explores the overlapping workplace threat landscape and the roles of homeland security and industrial hygiene enterprises in preventing, mitigating, responding to, and helping people recover from workplace violence, including active shooters, as a natural extension of the purview of those enterprises in addressing all hazards. The article concludes by setting forth a means for improving workplace violence prevention and response through industrial hygiene concepts and through the contributions of industrial hygiene professionals.

KEYWORDS
All hazards; homeland security enterprises; industrial hygiene enterprise; mass shootings; psychosocial stressors; workplace violence



Workplace Violence (CA Labor Code 6401.9)

Any act of violence or a threat of violence occurring in the workplace.

- Threat or use of physical force against an employee resulting in, or a high likelihood of injury, psychological trauma, or stress
- An incident involving a threat or use of a firearm or dangerous weapon, including the use of common objects as weapons
- Labor Code 6401.9 Four types of Workplace Violence

No injury required

4 Types of Workplace Violence

1



Criminal Intent

Acts carried out by individuals with no legitimate relationship to the organization.

25%

2

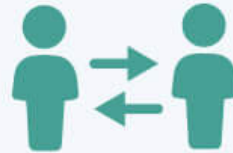


Customer or Client

Violence committed by a customer, client, patient, or visitor against an employee.

40%

3



Worker-on-Worker

Conflicts between employees or supervisors, involving current or former staff.

26%

4



Personal Relationship

Incidents where someone connected to an employee targets them at work.

6%

***All percentages are approximations based on disparate data sets**

1



Criminal Intent
85% of Fatalities

Perpetrator has no direct or previous relationship with the employee or organization.

2



Customer/Client
7% of Fatalities

Perpetrator is a client, customer, or patient of the employee or organization.

3



Worker on Worker
5% of Fatalities

Perpetrator is a current or former employee, vendor, or contractor of the organization.

4



Personal Relationship
3% of Fatalities

Perpetrator has a direct relationship with the victim outside of work that spills into the workplace.

- terrorism/violent extremism/ideological
- hate crime
- targeted violence
- juvenile delinquency
- mental illness



- 2 million workplace violence incidents annually, costing \$120 billion+ (National Safety Council, 2022).
- 740 fatalities attributed to violence in the workplace in 2023 (Dept. Labor, 2024)
- Protective Services and Healthcare workers are most often affected (DOJ, 2022).
- 44% of nurses reported workplace violence attacks & 68% reported verbal abuse (AHA, 2022).
- 60% of teachers reported workplace violence (NPR, 2022).



Workplace Violence Indicators



- subtle > **dramatic changes in behavior**
- veiled/overt threats > aggressive body language
- persistent complaining about unfair treatment
- emotional responses to criticism, mood swings
- withdrawal, depression, suicidal ideation
- alcohol & substance abuse
- decline in work performance
- unexplained absenteeism

CONTEXT
MATTERS

General Duty Clause (OSHA 1970)

Employers “**must**” provide a place of employment free from recognized hazards that are likely to cause death or serious physical harm.

....when there is a feasible method to abate the hazard [courts]

OSHA: **If** an employer is aware of violence/potential for violence in the workplace, “**should**” implement a workplace violence prevention program

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General Duty Clause violations **must** demonstrate that

1. Employer failed to keep the workplace free of a hazard to which its employees were exposed.
2. Hazard must have been recognizable.
3. Hazard must have caused or was likely to cause death or serious physical harm.
4. A feasible and practical method to correct the risk must have been available.



VIOLATION

California Labor Code, 6401.9

Workplace Violence Prevention Plan [July 1, 2024]

*Injury and Illness Prevention Program

- Identifies responsible parties
- Involves employees and representatives
- Reporting system that prohibits retaliation
- Informs employees
- Response mechanisms for emergencies
- Training by qualified trainers
- Identifying, evaluating, and correcting WV hazards
- Post-incident response and investigation



Exceptions to California Labor Code, 6401.9

- Healthcare facilities *special Cal/OSHA standard
- Worksites with fewer than 10 employees, not accessible to the public, must have a compliant IIPP
- Employees teleworking from a location not controlled by the employer.
- Law enforcement

Draft changes to Labor Code, 6401.9

1. Prohibits retaliation against an employee who defends themselves against a criminal assault
2. Employee headcount changed from 10 actually working at one time to the total employee headcount
3. Engineering controls and workplace practice definitions refined
4. Changes in reporting channels: employees may report WV to someone other than their direct supervisor
5. Record keeping requirements: 5 years for inspections, investigations, and assessments, and 1 year for training



Workplace Violence Prevention for Healthcare & Social Services Act

Bill. April 1, 2025, to Committee Health, Education, Labor, & Pensions

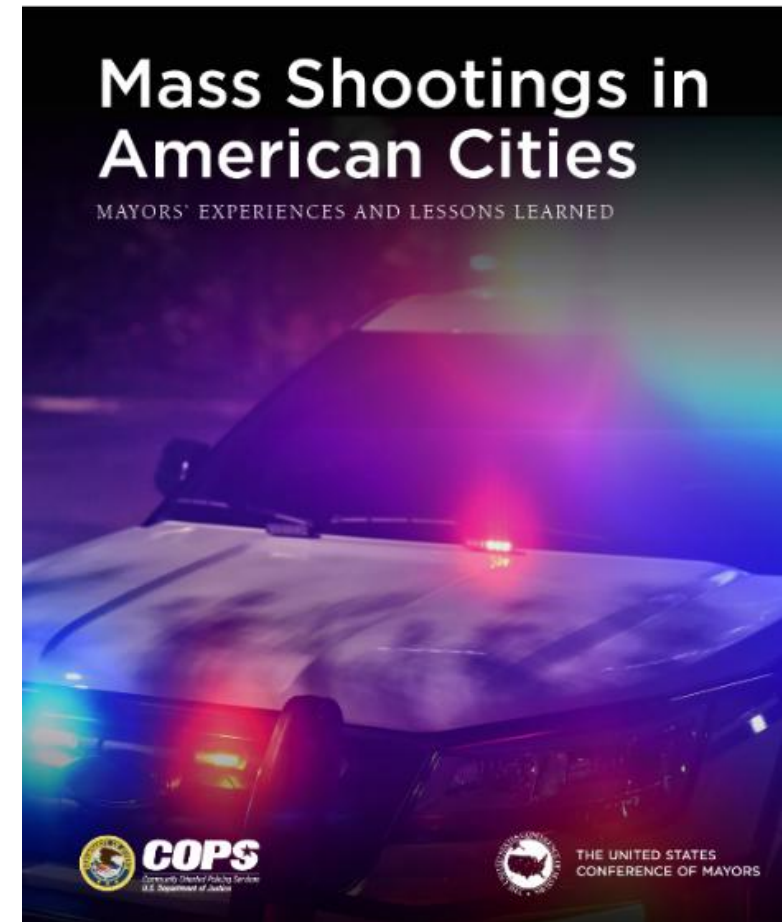
Comprehensive Workplace Violence Prevention Plan

Broader implications

- Holistic integration of workplace violence into safety-security plans
- Identifies mental health nexus to workplace violence

Aftermath

- Business Continuity
- Caring for the victims, survivors, and families
- Community reaction
- Observations and Memorials
- Litigation
- Counseling



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