

***California Compliance Update: When to expect California's new workplace violence prevention training requirement, and what you can do to prepare.***



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**Summary:**

- California is in the middle of a legislative process to enact a new state law requiring all California employers to train their people on workplace violence prevention.
- California companies and advocacy groups raised concerns that implementation of and compliance with this new law would be overly burdensome and cost employers significant time and resources.
- There are certain assumptions that can be made on what to expect in this new law based on previous requirements placed on the healthcare industry and the comments released by CA regulatory bodies.
- To prepare for this new compliance requirement, you have several options. We provide an overview of which one(s) will meet the anticipated standards, what is the best fit for your company, and the positives and negatives of each.

If your company is based in California, you know the drill. California leads the nation in plenty of statistics. Population? Check. Wildfires? Check. Celebrities per capita? Check. Earthquakes? Check. State-mandated training requirements? Check. California continues to lead the nation in requiring employers to train their employees in subjects identified for positive societal change. Like it or not, California is at it again – this time with mandatory training requirements for workplace violence prevention. In the last few years, California's response has been to push through laws and regulations aimed at preventing workplace violence of all types, including "active shooter" incidents. The most recent draft of these proposed regulations would require employers to dedicate significant resources on this subject for training, prevention, emergency response, and record keeping.

The second draft of this new legislation was released in October 2018 and the public, legal teams, and crazy training research outfits (read "us") fully anticipated that this was headed to the California state legislators for approval later this year. But in our most recent conversations with the Cal/OSHA office in January 2020, they offered a different timeline. Cal/OSHA reported a delay in finalizing the standard that they will submit for approval. Without going into too much detail, they also noted that concerns raised by employers and advocacy groups in California have resulted in more revisions to the proposed standards than expected. They expect to release draft #3 within the next two months, followed by more feedback from constituents. In short, it now appears that the enactment of this legislation is still a year or two off, so California companies have a short reprieve before the new compliance gauntlet comes down.

When they kicked off this initiative in January 2017, California lawmakers planned to implement a workplace violence prevention standard for all industries and all employers in the state. This did not appear to include any exceptions for small employers – so they are targeting everyone, not just bigger companies with deeper pocketbooks. Always the trendsetter, California is preparing to present these regulations to the nation as a model for other states as well as for new standards under the federal Occupational Safety and Health Act. With the nation’s plague of mass shootings and other violent incidents not showing any signs of slowing soon (which is sad and discouraging), this legislative movement is likely to expand well beyond their borders. California could just be the tip of the iceberg.

When Cal/OSHA started this journey, there were four major requirements they were planning to implement. Each of these issues was a carry-over from the healthcare industry workplace violence prevention requirement passed in 2017. These requirements include:

1. Creation of a written, employer-specific workplace violence prevention plan,
2. Establishment and upkeep of a violent incident log, describing in detail any incident, post-incident response, and workplace violence injury investigation,
3. Implementation of a comprehensive training program, and
4. Appropriate recordkeeping.

Sooo.... If you are in California, what can you do to prepare? Give me a moment to don my training wizard hat and stir up the tea leaves.

Like previous installments, let me set my focus and explain the qualifiers first. In this piece, I concentrate on the anticipated training requirements of this new law; not on creating an employer-specific prevention plan, an incident log, or keeping your records straight. Also, until the final bill is passed and becomes the law of the land in California, I am forced to make some well-informed assumptions on what to expect. When I do, I will note them.

For California employers, this training requirement will not be an easy one to implement. California has been grappling with workplace violence prevention for years. If the state has been struggling with solutions to this epidemic, it isn’t going to be easy for you either. While the history behind this bill is interesting (CA Labor Code Section 6401.8, CA OSHSB recommendations, the Healthcare industry requirements, *Secretary of Labor v. Integra Health Management*, etc.), all you need to know is that this complicated issue has ping-ponged back and forth for a while. There is a lack of qualified subject matter experts out there and no one knows exactly what to do. The chance that you have a violence prevention and response expert on staff to train all your employees is pretty remote as well. These issues, among others, will make implementing this new training requirement challenging.

Breaking it down:

1) **Timeline.** In July 2019, the California Occupational Safety and Health Standards Board (OSHSB) announced that they were working on revisions to the standards and that a new draft was expected in October 2019. October has come and gone, and nothing has been

posted yet. In our recent conversations with the Cal/OSHA office, we learned they are targeting mid- to late-February for draft #3. Due to the number of California companies and advocacy groups that provided comments and recommendations to draft #2 (fourteen separate entities), there may be a draft #4 on the way as well. When all the drafts are wrapped up, the Standards Board might seek additional comments, or they could simply craft the final standards for approval. In addition, a standardized regulatory impact analysis still needs to be conducted, which according to California law can take up to 90 days.

Suggestion: This new law appears to be headed for a longer enactment timeline than normal. The typical process takes 2 to 3 years from initial petition to implementation. You can now make a safe assumption that this law will be passed in late 2021 or in 2022. If other California-mandated training requirements are any indication, you will then have a stated effective date announced, with a one-year implementation period. There is a decent chance that California will further recognize the complexities of this issue when the regulatory impact analysis is completed (read “how can we expect our employers to know exactly what to do and reasonably afford the cost of complying in any sort of expedited time frame”). So be prepared for 2022, but further enactment delays are possible.

2) **Content.** California OSHSB has previously prepared and adopted a regulation for workplace violence preparation, prevention, and response in the state’s hospitals and skilled nursing facilities. In April 2017, the Standards Board adopted a workplace violence prevention standard for the healthcare industry and the law went into effect a year later. It is widely assumed that OSHSB is using these previously established principles as the foundation for creating the standards for every other industry in the state. So what can we glean from OSHSB’s previous work?

OSHSB’s healthcare standards led to the passing of a bill which requires that employers provide annual education and training to all employees at their facilities. This training must include, but is not limited to:

- Identifying potentially harmful and violent situations and appropriate responses thereto;
- Reporting violent incidents to law enforcement officials; and
- Resources available to employees coping with the aftermath of a violent incident, such as critical incident stress debriefing and/or employee assistance programs.

This core content follows a predictable pattern of training employees on the preparation (before), response (during), and triage and support (after) for workplace violence incidents. While these topics seem pretty clear cut from the high level, it gets really murky from there. Preparation for a school-based incident is far different than preparing for an event at a restaurant. An open-air concert venue has different prevention and response challenges than an accounting office. Also, workplace violence incidents vary widely, from active shooter events by an unknown assailant to verbal confrontations between coworkers. How do you set standard training requirements when the variables are so vast?

What to expect: We should assume that OSHSB will provide substantially broad guidance, with a charge that each employer must adapt their training standards to their own specific

workplace environment. So, plan to implement a training program that covers the before, during, and after of any type of workplace violence incident that could occur in your specific setting. Assume that your training program will include your specific floor plan(s), escape routes, local emergency and mental health resources, etc. You should also assume that training programs that only provide the 'run-hide-fight' standard developed by the Department of Homeland Security and City of Houston will not fully meet the new OSHSB standard. This run-hide-fight program (which has almost become synonymous with active threat training) would only cover the 'during' portion of the requirement. You would then be missing the 'before' and 'after.' With that said, a program on run-hide-fight could cover one third of your program if you decide it is the way you want to go.

**3) Training Format.** When considering the format of your training program, we can infer a few things from other required state training mandates previously put into law on other topics. Over the past few years, the "training shall be interactive" requirement has found its way into state laws. I would expect it to show up in California's new workplace violence prevention law as well. Interactivity within a training program can be accomplished in a multitude of different ways. But you must assume that you will not be able to get away with assigning a reading exercise – or watching a video – or implementing an online training program which has interactivity that consists of clicking the 'next' button. If you assume that clicking "next" satisfies the interactivity requirement, you are venturing into a gray area, so you should plan for something a little more interactive than that.

The healthcare workplace violence prevention bill loosely outlines flexibility in how the training can be provided, that is, training given "in person" versus training "not given in person." If you decide on a solution "not given in person," the healthcare bill requires that the program must provide functionality for learners to ask questions that will be answered within one business day by a person knowledgeable about the employer's workplace violence prevention plan. Expect this same requirement in the new legislation.

**4) How long does the training course have to be? How often do we have to take it?**

At the present, there is no information provided on a required course length. There is also no course length specified in the healthcare requirement. So, there may not be a minimum course length requirement given in this new law either. That being said, other California laws, like those for sexual harassment prevention training, mandate minimum course lengths. This one could go either way. So we will hold our assumptions on this until the final regulations are released. However, there is information that we can gather on 'how often.' In the healthcare requirement, you must "provide *refresher* training at least annually" to "review the topics included in the initial training." So we may be looking at two different types of events: 1) An initial comprehensive training program, and 2) a 'refresher' that is shorter and would highlight the main concepts of the original training course. In any event, it appears you will be training your employees annually on this subject.

**5) How to accomplish training on a topic like Workplace Violence Prevention and Response.** This is not a subject that most companies have in-house expertise on. Mid-sized companies with internal HR and training departments may be able to cover California's sexual harassment prevention requirements with internal training, but expecting these

professionals to be experts in violence prevention and response techniques may be a bit much to ask. Large companies may have security professionals on staff. This may be the team you task with creating your workplace specific violence prevention plan (following OSHSB's guidance), maintaining your violent incident log, and conducting training events. For everyone else, you will probably have to outsource.

There are two opposite drivers that companies have to deal with when addressing any training requirement: Economics (keeping cost down) and Effectiveness (highest impact). It would be great to do everything possible to create the safest workplace possible, but let's be honest, budget considerations are always at play. Therefore, most individuals with purchasing authority will have to deal with some tradeoffs.

Considerations/Suggestions: Hiring an expert facilitator can be an effective option, but this is typically the most expensive choice and it can be challenging to get all your employees together at a single point in time. Also keep in mind that this workplace violence prevention requirement is brand new in California. If you are planning to outsource a trainer with subject matter expertise in this subject, there will not be many choices available to you at the onset. Supply and demand means, with fewer options available, qualified trainers will request higher fees. Online eLearning programs will be less costly and more flexible to schedule, but you lose the open discussion and Q/A benefits of having a facilitator. And you have to make sure that whatever online program you choose provides the flexibility to be tailored to your type of workplace. Or you can try to do the training internally, which will be the least expensive *IF* you already have an expert on staff who can professionally handle it for you.

**6) What should you be doing now?** Workplace violence prevention is one of those topics that should always be on the top of mind. While the chance that something will happen at your workplace may be small, the percentage is (unfortunately) on the rise. From a training point of view, this is a subject where good training and preparation can save lives. That leadership program or Microsoft Office training course you just assigned to your learners has a much lower impact point.

At a minimum, you should be doing some research and preparing yourself. If you do not have a company-specific Workplace Violence Prevention Plan or a violent incident log, start looking into the best practices for creating them. Much of what you develop in your company's prevention plan will also help tailor your training program to your workplace. You may want to start researching and testing out the best training solutions for your company as well. Lucky for you, I've outlined the main options available for you below.

**7) Implementation and Overview of Training Options.** Plan to set aside time for employees to complete the course. And plan to pay them for the time that they spend participating. When addressing the yearly requirement, many companies have found it most effective and easiest to create a training event month (or period) every year. In this month, everyone takes the training program – from CEO to intern – whether they have been there for six months or 20 years. Many companies have tried rolling training times over the entire year but found it a logistical nightmare. We have also found that when all

employees receive training in the same time period, there is an added reinforcement of learning in the discussions between employees about their “shared” experience. For any new employee hired after your training event, have them attend the following year’s companywide training. Of course, we will be alert to and report on any requirement to complete training for new hires within, say, 90 days of starting work. That initial training requirement has appeared in several states on other topics. Many companies have seasonal ebbs and flows in workload. Once the state-mandated enactment dates are set, pick a time that is traditionally less active for your company and lock it in.

**Facilitated Training.** Outside consultants will generally be your most expensive option. Expert trainers typically charge per event (with a maximum attendee number per session), so the more sessions you have, the more it will cost you. Also, you should anticipate that finding available experts might be challenging for a while, until the number of qualified firms in California offering this service catches up with the companies needing it.

When you speak with companies or security firms that offer facilitated training, expect them to mention the negatives of eLearning and the importance of face-to-face interaction. But there are also negatives to facilitated training, including the fact that limited training sessions create an obstacle for adequately training absent employees or for companies with workforces that cannot convene all at one time or at one location.

**ELearning.** ELearning will promote 24/7/365 availability, affordability, and ease of tracking and reporting, but they are not going to be able to provide the open dialogue interaction with their audiences. Also, because of the anticipated ‘workplace-specific’ training requirement, any CA-approved eLearning program must include content relevant to your work setting or be flexible enough for you to include this information.

ELearning has made giant leaps in instructional design since the didactic ‘click forward and read’ model was in vogue over a decade ago. These old online courses typically included something akin to a PowerPoint presentation with pictures and voiceover. Many of these options still exist out there, so keep that in mind when you are doing your research. Today there are eLearning options available to you that will conform to all the unique content requirements we are expecting from California lawmakers – and they won’t put your learners into a coma. These new designs are surprisingly interactive and engaging. Take this [ONE](#) for example.

**Webinars.** Webinars are sort of stuck in the middle, a little cheaper than having a facilitator on site, but interaction with the audience is kind of clunky and if you plan to use a recording of the webinar for employees that didn’t attend the original showing, you will not meet the anticipated ‘interactive’ standard.

**Linear Videos.** Speaking of not meeting the ‘interactive’ standard, showing didactic videos should not be on your radar. You might consider including one of the Run-Hide-Fight videos that are available out there to supplement an internal training event, as it could assist in the ‘During’ portion of the training requirement. But as mentioned earlier, you cannot skip the ‘Before’ and ‘After,’ which must incorporate user interactivity. States are

increasingly adopting the ‘shall be interactive’ mandate for training programs because they recognize that many learners simply hit play and then walk away.

**Training with Internal Resources.** If you have dedicated people assigned to security already, you may be able to complete the training requirement internally. When taking it all in-house, make sure that whoever is designated as your trainer has legal and topical subject matter expertise in workplace violence prevention and response. They have to be prepared with facts and be able to answer tough questions appropriately. From a cost standpoint, don’t think you are getting off scot-free. You also have to consider that time is money with internal personnel. So the time they are preparing for and conducting training sessions is time that you are paying for, as well as hours lost that your designated trainer could have spent on other security responsibilities.

**Blending Solutions.** Don’t assume that you have to pick just one solution from the list above. Some companies have blended together two solutions with success, with the most common being combining a facilitator to come in for an initial training event and using eLearning to reach employees who can’t attend the in-person session, for new hires, and for refresher training.

## **Conclusions**

As California waits to see when these training regulations will become effective and what specific form they will take, California employers should take steps now to prepare for them. Understand that this is a complicated problem without a quick-fix, boilerplate training solution. All companies and organizations are unique. Each has different types of workplaces, schedules, budgets, cultures, and employee competencies.

As you wait, consider the benefits of being proactive. Having a workplace violence prevention plan and maintaining a violent incident log are prudent measures to mitigate both risks and potential liabilities. And, offering training sends an important message to employees about your workplace culture and how your business values their safety. It may be beneficial to lean forward on this issue.

Hopefully with the suggestions and assumptions provided above, you can be fully prepared for California’s new requirements and be able to pick the best training solution for your specific circumstances.

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