Mass Shootings: Does Cal/OSHA Have a Say?

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In the wake of recent workplace shootings, employers may be wondering if there are any specific regulations to protect employees from such events. Labor Code § 6302(h) as part of the California Occupational Safety and Health Act, excludes “any injury or illness or death caused by the commission of a Penal Code violation” from the definition of serious injury or illness, and Cal/OSHA has no mandatory duty to respond to such incidents. However, Cal/OSHA does have the authority to investigate any workplace accident on a discretionary basis, as provided by Labor Code § 6313(b), which states: “[t]he division may investigate the causes of any other industrial accident or occupational illness which occurs within the state in any employment or place of employment... and shall issue any orders necessary to eliminate the causes and prevent reoccurrence.”

Currently, Cal/OSHA only specifically regulates workplace violence in the Health Care Industry. But there is no regulation covering workplace violence in other industries.

Nevertheless, Cal/OSHA does require employers to regularly identify and evaluate
workplace hazards, under California’s version of the **general duty clause**. As these incidents become more prevalent, or if an industry has factors that could increase the risk of violence as detailed below, Cal/OSHA may take the position that workplace violence is a recognized hazard that should be mitigated.

Indeed, Cal/OSHA, in its [guidance on workplace violence](#), cites certain factors to consider for the potential of violence including:

- Exchange of money
- Working alone at night and during early morning hours
- Availability of valued items
- Guarding money or valuable property
- Performing public safety functions
- Working with patients, clients, or similar
- Employees with a history of assaults or who have exhibited belligerent, intimidating, or threatening behavior.

According to Cal/OSHA, workplaces that identify factors for potential workplace violence should include the following in their Injury and Illness Prevention Plan (IIPP):

- A system for ensuring that employees comply with safe and healthy work practices, including ensuring that all employees, including supervisors and managers, comply with work practices designed to make the workplace more secure and do not engage in threats or physical actions which create a security hazard to other employees, supervisors or managers in the workplace.

- A system for communicating with employees about workplace security hazards, including a means that employees can use to inform the employer of security hazards at the worksite without fear of reprisal.

- Procedures for identifying workplace security hazards including scheduled periodic inspections to identify unsafe conditions and work practices whenever the employer is made aware of a new or a previously unrecognized hazard.

- Procedures for investigating occupational injury or illness arising from a workplace assault or threat of assault.

- Procedures for correcting unsafe conditions, work practices, and work procedures, including workplace security hazards, and with attention to procedures for protecting employees from physical retaliation for reporting threats.

- Training and instruction about how to recognize workplace security hazards, measures to prevent workplace assaults, and what to do when an assault occurs, including emergency action and post-emergency procedures.
These policies and procedures should also be mirrored in Employee Handbooks to the extent necessary to ensure communication of the requirements.

If you have questions about including workplace violence prevention information in your IIPP or employee handbook, contact a Jackson Lewis attorney to discuss.

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