

Labor Management Decisions

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The previous issue of Labor Management Decisions examined the changing structure of the California workers' compensation system, which provides for people injured in the scope of employment. Most occupational injuries result from mishaps or repeated motions in the normal performance of job tasks, such as falling off a ladder in an orchard, getting a hand caught in moving parts on a tractor, or entering data nonstop on a keyboard in the office.

But an increasing and particularly disturbing portion of injuries at the workplace are caused by the violent behavior of other people, including co-workers, subordinates, and even visitors. About one-sixth of all violent crimes in the United States occur in the workplace, according to a new U.S. Justice Department report. Some of the injuries in these cases are covered by workers' compensation. All of them, however, can be extremely damaging to persons and to organizations. Furthermore, business operations may be harmed by not only the occurrence but also the very potential for violence.

Agricultural as well as other employers can and should take steps to prevent workplace violence and to deal effectively with it when it occurs. This article briefly describes the problems posed by workplace violence and offers recommendations on what employers may do about it.

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Preventing and Coping with Workplace Violence

Scott A. Wilson

Homicide is the third leading cause of death on the job. "An estimated 1,400 people are murdered at work in the United States annually □.□.□. (and) as many as 7,000 fatal work-related injuries occur each year as well," according to a National Traumatic Occupational Fatality Study.

A case in California illustrates the impact of workplace violence. On August □3, 1990, a 20-year-old woman was stabbed to death by a co-worker at the entrance of the winery where they were both employed. The assailant had been fired because of bad work habits. He also had a criminal record indicating that he was a dangerous person, but the temporary agency that as-

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signed him to the winery allegedly failed to check his work references. A jury awarded to the victim's survivors \$5.5 million in damages against the temporary agency that had hired her murderer.

Workplace violence can have devastating consequences. No employer, including agricultural employers, is immune from these conflicts.

Legal Considerations for the Employer

The law with respect to the liability of employers is still evolving. Workplace violence exposes employers to legal liability under various theories. Potential extensions of existing law that may be sources of liability are discussed below to assist employers in understanding possible claims. The discussion, however, should not be taken as an acknowledgment of the validity of such untried theories.

Requirements of the Federal Occupational Safety and Health Act. Although the law in this area is still developing, an employer who learns that a current or former employee has threatened violence against another employee may have to take certain preventive steps under the Federal Occupational Safety and Health Act (Fed-OSHA) and its state counterparts. Such acts generally require employers to provide a place of employment that is "free from *recognized* hazards that are causing or are likely to cause death or serious physical harm to □.□.□. employees." The best way for the employer to avoid liability under the Act would be to address workplace security and to include in its safety program training on violent situations.

Negligent hiring, supervision, and retention. The tort of negligent hiring is based on the principle that an employer has a duty to protect employees and customers from injuries caused by employees whom the employer knows or should know pose a risk of harm to others. An employer may be found to have breached this duty by hiring an unfit applicant when, for example, the employer neglected to contact the applicant's former employers or to check references, and such an investigation would have revealed that the applicant had a violent propensity or was otherwise unfit for the job.

Courts may also recognize the theory of negligent supervision as a basis for an employer's liability, for example, when one employee alleges that the employer should have taken reasonable care in supervising a second employee who has threatened the first with violent conduct. Another theory of employer liability is "negli-

gent retention." Where an employer does not realize an applicant's violent tendencies at the time of hiring, but later discovers that he or she is prone to violence yet still retains the employee, the employer may be liable under this theory for harm the employee causes to another.¹

Obligations stemming from public policy. An employer is prohibited from discriminating or retaliating against employees who express concerns about unsafe working conditions, such as threats of violence in the workplace. In California, an employee who feels that he or she has been discriminated against or terminated for expressing such concerns or for refusing to work under hazardous conditions may bring a claim against the employer.

Employers may also have some obligations stemming from statutory provisions. Under the California Corporate Criminal Liability Act, individual managers and corporations may be criminally liable for failing to disclose concealed hazards. The civil liabilities that a California employer may incur from failing to abide by some statutory duty or other legal obligation can be substantial. For example, an employer in California may be liable for punitive damages in a tort action for the conduct of an employee that is the result of malice, fraud, or oppression, if the employer had notice of the unfitness of the worker and employed him or her with a conscious disregard for the safety of others.

Applicability of Workers' Compensation in Workplace Violence Cases

Employers' liabilities under workers' compensation. The role of the workers' compensation system is significant in workplace violence but varies from state to state. In California, as in most states, for an employee's injury to be compensable, it not only must be sustained in the course of employment (during the performance of service) but also must arise out of the employment. Stated another way, an assault is compensable where the subject matter of the dispute leading to the assault involves the work itself or where the work brought the injured employee and the perpetrator together and created the situation that resulted in the altercation. Under such circumstances, workers' compensation is generally the exclusive remedy, and the worker is precluded from filing other civil claims against the employer.

For example, where employment places the victim in a location where he or she is shot by a bullet intended for another individual, the victim's exclusive remedy is

1. Employers may have other obligations to employees under contractual theories for harm caused by workplace violence.

(Continued on page 14)

The ALRB: Continuing to Earn California's Trust

Bruce J. Janigian
Chairman, Agricultural Labor Relations Board

The greatest challenge facing the Agricultural Labor Relations Board continues to be consistently improving its performance in the face of diminishing resources and a dramatically changing farm labor environment.

In previous articles in *Labor Management Decisions* (Fall 1991 and Winter-Spring 1993), I outlined some of the board's strategies not only to meet public expectations, but to surpass and exceed them. Throughout this period and until the present, we have found opportunities in adversity and motivation through circumstances demanding the best from each of us.

As a result, disbursements making aggrieved parties whole have increased nearly tenfold over the past two years and are greater today than at any other time in the board's history. For the first time, the monetary relief provided exceeds the amount of the board's budget. Similarly, the processing time for an election petition to result in a board certification is faster today than ever before — now averaging just 18 days. From 1975 to 1990, it took more than ten times that long. Most amazing of all is that these results have occurred with a staff only 20 percent as large as at its peak in 1979.

These and other dramatic results did not just happen. We identified problems, developed solutions, and made effective changes to our procedures and operations. We were guided throughout by a philosophy that proactive dispute avoidance, or resolution at its earliest stages, is far better than an exhaustive litigious process, which rewards only legal counsel at the expense of both management and labor. We were guided also by the reality that justice delayed is justice denied. This is especially true for migrant and seasonal workers who cannot wait years for just compensation following an unfair labor practice.

Examples of recent changes include combining liability and compliance proceedings into a single hear-

ing, saving literally years of litigation and appeals, and associated expenses in nearly every case. They include simultaneous processing of challenged ballots and election objections, which drastically speeds up our certification process. They include the elimination of unnecessary legal briefs and numerous other modifications that speed up resolutions at every stage without sacrificing quality or accuracy.

When we have had to absorb drastic budget reductions, we did so in a manner preserving, as best we could, our field offices and our operations. We gave up headquarters office space and staff and procured computers and software so that those who remained could work smarter and more efficiently. We cross-trained counsel and staff for functions previously performed, in some cases, by three or four individuals. We utilized GAIN (Greater Avenues for Independence Network) workers for field offices and supplemented headquarters staff with student interns. We even requested that the governor maintain two vacancies on the board so that we could have salary savings to cover operating expenses.

With a spirit of cooperation, the board has functioned at a quorum of three members since 1992. Board members have made themselves available on a continuous basis, seven days a week, fifty-two weeks a year. They also have unhesitatingly picked up many administrative and operational functions previously delegated to staff, while surrendering personal secretaries and other perquisites of office.

When the board was targeted in a vexatious lawsuit, the Attorney General's Office said, in effect, that the board could represent itself. The board, however, had previously given up its own litigator. Using outside counsel on an interim basis, we had to split an administrative law judge position in two, gaining a highly qualified, former deputy attorney general, as well as an ex-

perienced administrative law judge sitting on an as-needed basis.

This lawsuit stemmed from changing conditions in the fields, which called into question the jurisdictional boundaries of the ALRB in relation to the National Labor Relations Board. Dramatically increased use of farm labor contractors, field packing operations, and leased farming arrangements have complicated what was previously a well-defined separation between the domains of the respective boards.

Another complex issue recently addressed by the board was the years-long table grape boycott of the United Farm Workers. Like many politically charged issues dealt with by the board, all matters have been handled judiciously with the highest ethical standards and conduct, and have demonstrated the kind of expertise and specialized knowledge that are uniformly relied upon by reviewing courts in California and the nation.

To meet the challenges posed by a dynamic farm employment environment, and to continue to operate as proactively as possible, the board is expanding its outreach and educational activities. With assistance from the governor's Task Force on Quality Government, we have developed an innovative and exciting approach to educating both farm laborers and growers about their rights and responsibilities under the Agricultural Labor Relations Act (ALRA). Called the Pioneer Project, it will be the first extensive outreach program undertaken by this agency in over a decade.

The simple reality is that many disputes are attributable to public ignorance of rights and responsibilities. For example, the right of workers to engage in concerted protected activity exists whenever workers act together to seek improvements in their working conditions, pay, or benefits. This right exists wholly apart from any union activity or union presence, and it is generally unknown among farm workers and their employers. Without greater public awareness, there will be little observance or assertion of these legal protections.

Existing ALRB educational programs have been limited to participating in the few farm worker programs established by other federal or state agencies, an approach that has not afforded much concentration on matters specific to the ALRA. The need for a cooperative, coordinated approach to worker outreach is apparent at many levels. For example, when a farm worker is discharged, he or she generally appears at an Employment Development Department (EDD) field office to apply for unemployment benefits. Since qualification for unemployment benefits depends on the circumstances surrounding the employee's separation from employment, EDD representatives ask questions

about the reasons for discharge. Yet because the Unemployment Compensation Act makes no mention of retaliatory discharges, EDD intake workers do not normally think to refer possible victims of discrimination to this agency to pursue their remedies. If the discharge clearly was in violation of the ALRA, the farm worker should be informed of his or her right to pursue immediate reinstatement through the ALRB, rather than simply being added to the unemployment insurance rolls. Failure to do so adds to federal and state administrative costs, constitutes a tax on all California employers, and adds to workforce instability.

The Pioneer Project will establish a partnership of cooperation and support among farm labor and employer groups. It will make presentations in rural communities on a posted and widely publicized schedule to reach migrant labor camps, ranches, local law enforcement agencies, and grower co-ops and associations. It will produce multilingual audio and audiovisual presentations that will be made available for statewide listening and viewing through local foreign language stations and distribution through organizations interested in agricultural labor issues.

While we are pursuing outreach, we are also continuing a comprehensive review of our regulations. Besides changing some housekeeping details to move our processes along more smoothly, we have embarked on substantive revisions. We believe that some kinds of disputes that continually arise can be eliminated by clarification of existing rules. We have codified procedures for calculating peak agricultural employment for the purposes of determining when there is a representative complement of employees in an agricultural workplace; we have drafted a detailed procedure for handling representation petitions in the face of unfair labor practices that could affect either the employees' free choice or the existence of a valid question concerning representation. We have also codified our rules concerning access, and we have set forth a procedural scheme for dealing with access violations.

As part of the regulatory process, the board has conducted public hearings throughout the state and has heard extensive comment by worker and grower representatives. The great amount of interest evinced by both farm workers and employer groups in our regulatory reform has been extremely encouraging. It demonstrates the continuing importance of this board, which next year marks its twentieth anniversary. We believe our efforts to improve and expedite board operations, our outreach to farm workers and employers concerning their respective rights and responsibilities, and our ongoing efforts to depoliticize the board and increase credibility with the public we serve demonstrate how we are continuing to earn California's trust. □

Cruising Along the WPS Information Highway

Howard R. Rosenberg

The Worker Protection Standard (WPS) for Agricultural Pesticides has stimulated training efforts, questions, objections, and now keyboards from coast to coast. Designed to reduce and mitigate pesticide hazards to an estimated 4 million people working in U.S. fields, forests, nurseries, and greenhouses, this complex regulation by the U.S. Environmental Protection Agency (EPA) carries requirements for the majority of agricultural employers in the nation. Despite virtually universal agreement with the goal of the WPS, there remain much uncertainty and controversy about the means for pursuing it.

As reported in the previous issue of *Labor Management Decisions*, Congress enacted a bill in March pushing back the effective date of several provisions from April 15, 1994, to January 1, 1995. This legislation, signed by the President in early April, provides more time for the EPA to prepare and authorize official training materials, for various organizations to get the word out, and for agricultural employers and state enforcement agencies alike to prepare for full implementation. Although EPA published the WPS in August 1992, after years of consultation with groups affected, awareness and understanding of its basic provisions have been quite uneven among agricultural employers, employees, and advisors.

EPA is encouraging employers to use the time between now and January to learn about their new obligations and to obtain materials needed for compliance. The set of requirements to understand and comply with, however, is not static. Decisions made through administrative procedures of the WPS may significantly affect employer obligations. Responding in early June to a long pending petition, for example, the EPA granted a limited exception to WPS restrictions on early entry

into pesticide-treated areas for the harvesting of greenhouse-grown roses. A class of alterations that will apply more broadly will be defined in "equivalency" agreements under which individual states commit to uphold state standards at least as protective of workers as the federal. Public hearings on the proposed terms of equivalency in California are not expected until the Fall.

Moreover, some basic provisions of the Worker Protection Standard are up for reconsideration. In early July the National Association of State Departments of Agriculture (NASDA) submitted to EPA Administrator Carol M. Browner a petition asking for significant revision of the WPS. The petition includes several specific proposals formulated after weighing information from commissioners, secretaries, and directors of agriculture, worker representatives, and agricultural producers.

Special E-Mail Network Up and Running

Many of those whom the WPS is supposed to affect still have basic questions about its fundamentals, and all face difficulty in keeping abreast of rule interpretations, proposed modifications, new references, and compliance resources. Changes, distances, and delays naturally translate into communication problems among all the parties involved in a regulation of this scope and complexity — including rule makers and enforcers themselves. And so it has been with respect to the WPS; people have had trouble getting what they need to know.

Modern technology can help, however, and it is presently being used to speed and broaden the exchange of essential information about the WPS. The UC Agricultural Personnel Management Program and the Depart-

ment of Agricultural and Resource Economics at Berkeley have established an electronic bulletin board and reference archive for anyone concerned with the Worker Protection Standard. This bulletin board, "WPS-Forum," welcomes all individuals who have an interest in the WPS and access to Internet, Bitnet, or a compatible electronic mail system. The forum opening was first announced, through the Internet, on May 19, 1994. At this writing, two months later, it has 215 subscribers.

WPS-Forum makes it possible to efficiently disseminate information to and pool knowledge from agricultural employers and employees, regulatory agency staff, educators, and other service providers. By actively participating in the forum, subscribers can keep one another better informed about the WPS, share ideas on how to deal with it, and perhaps even contribute to refining it. In addition, they can download references from the forum archive through a three-word e-mail command.

Posted messages. The "messages" that participants are posting include questions, answers, announcements, pearls of wisdom, complaints, and ideas on all manner of WPS-related issues. Message topics and types are varied, with the discussion to date tending to focus on rule interpretations, proposed changes, worker notification requirements, training materials, reference documents, and feasibility of compliance in real-world conditions. A sampling of messages posted in WPS-Forum during the past two months appears alongside this article.

To post an item for general distribution through the network, participants send an e-mail message to the forum Internet address (WPS-Forum@are.berkeley.edu). A copy of the message is automatically distributed to all other members. Those who want to reply to a message similarly send their comments to the forum address, and the system forwards these replies to all members, including the person who sent the original. Simply by being on the forum list, then, subscribers receive a copy of all messages shortly after they are posted. Frequency of postings, a handful per week at the outset and several per week currently, will likely increase to a few or more per day as membership grows, preparations for the January 1995 implementation of key provisions intensify, and practical experience under the regulation accumulates.

The U.S. Environmental Protection Agency, Region 9, is using the forum as an integral part of its ongoing public outreach effort. One of the first messages posted was the full text of its official "Questions and Answers"

Heard on WPS-Forum

Below is a sampling of items posted in WPS-Forum by participants. We are grateful to the authors for granting permission to reprint in Labor Management Decisions and additionally to some for minor modifications that update the original messages for this purpose.

While the WPS standards may protect workers, the overall impact on pesticide use may be negative. In our state, apple growers have adopted IPM on a wide scale. The success of this program depends on two things changed by the WPS standards. These are the ability of scouts or consultants to enter fields when they deem it important, and the ability of the growers to keep workers in the field. The consultant who has to spend much of the day in a Tyvek suit and respirator may not die from neural toxins, but dehydration becomes a real possibility. In actuality, most will probably stick with more reasonable clothing, and risk the wrath of the WPS enforcers. However, growers may choose to forget IPM entirely since a mid-week application may keep workers out of the field for a few days. Better to apply the pesticides every Friday afternoon and have the fields available Monday!

Has our search for the risk-free society once again left us on the horns of a dilemma?

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Continued

publication explaining the 1994 legislative changes for agricultural employers. EPA staff will continue to post news as well as respond to questions. The agency plans to publish and obtain comments through the forum on proposed changes in certain requirements that are scheduled for reconsideration later this summer.

The U.S. Department of Agriculture has chipped in with several informative messages, including a prompt summary of the limited reentry exception for harvesting roses. The Cal/EPA Department of Pesticide Regulation and County Agricultural Commissioners' Offices, which are responsible for enforcing the WPS in California, are also participating in the forum. Messages they post are to particularly help clarify how the California standards differ from those that are generally applicable in the nation.

The archive. Part of this bulletin board system is an archive that contains (1) a copy of all messages ever posted, and (2) a set of reference documents and compliance tools. Any file in the archive can be obtained by sending a three-word e-mail message to the system address. Return messages containing the requested files can be printed, machine-searched, edited, and saved just like any other e-mail file. These files can also be accessed through the Internet "gopher" protocol.

As references are added to the archive, they are announced in general postings to the forum, along with regular messages from participants. Subscribers can obtain a list of all files in the archive at any time by sending a two-word e-mail message.

The system software automatically places all messages sent to WPS-Forum into monthly chronological files that are especially helpful to newcomers interested in perusing the flow of discussion that took place before their arrival. Large reference files are not posted but rather placed directly into the archive for subscribers to retrieve if they wish. Some significant resource documents that have been posted are also later placed in the archive as files unto themselves (in addition to their automatic inclusion in chronological files).

Current contents of the archive are:

- Chronological file of all messages posted in May
- Chronological file of all messages posted in June
- Chronological file of all messages posted in July
- Full text of the WPS Final Rule, as published in the August 1992 *Federal Register* (6 large files)
- A companion Proposed Rule on Communication of

In summary, the recent congressional action provides the following: During 1994, users must comply with the WPS requirements that are spelled out on the label. These include requirements for personal protective equipment (PPE), the restricted entry interval, and the requirement for "double notification" if this requirement is on the label. Users do not need to comply with the referenced requirements of the label (those that refer to the WPS but are not fully spelled out) until January 1, 1995. These requirements include pesticide safety training for agricultural workers and handlers, decontamination sites, notification of workers about pesticide applications, display of information about pesticide applications, emergency assistance, and display of a safety poster. The legislation also provides optional PPE requirements for some irrigation work in 1994 and excludes crop advisors from WPS coverage until January 1, 1995.

Note: The above refers to Federal requirements only. These may be superseded by your State law.

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Anything new on the notification for pesticide applications? Last I read, the notification could be oral or with signs unless the material is a category 1 pesticide (signs only). Any practical advice on oral warnings? Often in vineyards partial blocks are treated, either for pest control purposes or the application for a day ended in the middle of a block. How is posting/notification handled in this case? Also, how will the inconsistencies between California posting regulations and EPA notification regulations play out?

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Pesticide Hazard Information, published with the Final WPS in August 1992

- ❑ Proposed Exception to the WPS Entry Prohibition for Hand Labor Tasks Performed on Cut Flowers and Cut Ferns (also published with the final WPS in August 1992)
- ❑ A lengthy March 1992 letter from USDA to EPA commenting on the June 1991 draft of the WPS, as published in the September 1992 *Federal Register*
- ❑ EPA Summary of the Public's Comments, and the Agency's Response, on the *Federal Register* Notice of Proposed Rulemaking in July 1988 (6 large files)
- ❑ EPA Questions & Answers on The 1994 Legislative Changes: A Guide for Agricultural Employers
- ❑ Summary of the Worker Protection Standard for Agricultural Pesticides, by Jack L. Runyan, USDA
- ❑ Script in English and Spanish of a 9-Minute Audio Cassette for Training Field Workers on Pesticide Use, Prepared by Steve Sutter
- ❑ Administrative Exception to Early-Entry Prohibition of the WPS for Harvesting Cut Roses, as published in the June 10, 1994, *Federal Register*
- ❑ Discussion Drafts (dated June 28, 1994) of Changes in the California Code of Regulations, with Initial Statement of Reasons, to Implement the WPS in California

Joining In

Anyone who has access to an Internet-compatible electronic mail system can take advantage of WPS-Forum. Various forms of participation include actively initiating or responding to posted messages, downloading files from the archive, or simply "listening in" to get more familiar with topics discussed by others. There is no charge to subscribe or to belong.

Subscribers increase the value of WPS-Forum for themselves and others by raising or framing significant issues, responding to questions, offering views on topics in which they have expertise, and contributing reference documents for the archive. So far, so good, and there will be plenty to keep up with in the months ahead.

To join the network, send to ListProc@are.berkeley.edu, the message: "SUBSCRIBE WPS-FORUM yourfirstname yourlastname" (for example: subscribe WPS-Forum Al Gore). A welcome message confirms the new subscription and provides more information about the features of this bulletin board system.

❑

Here in New Jersey our state pesticide codes require us to orally notify workers of all reentry times. Because of this, we have to post only when the label specifically says to. Concern exists, however, because of the type of agriculture we have. One large nursery I work with needs over 1,700 different signs due to the fact that they have many small blocks of different species which are all treated differently. I also work with many sweet corn growers that follow a TIGHT SPRAY SCHEDULE late in the season on possibly a 3 day schedule, which would mean that the fields would have to be perpetually posted.

Still another problem we have to address relates to day haul workers. Training is feasible provided the workers are the same individuals day in and day out, but what about situations where workers come on a daily basis from the city and most are not repeats on any type of regular basis? One blueberry grower uses 2,700 pickers daily, which must be nothing short of a nightmare to deal with.

Over the past two years I have personally trained over 400 workers in English, Spanish, and even one group in Cambodian. I jumped the gun in order to get growers used to the idea of training workers long before it was required. Interestingly, both myself and the growers felt the training would be barely tolerated by workers, when in fact most workers were sincerely interested and asked many good questions. Most programs went 45 minutes to an hour longer than scheduled because of the questions. As an added bonus for them we also covered ticks and Lyme Disease.

While the new requirements will be difficult, I feel we in extension can foster participation and cooperation if we have a positive attitude toward WPS. As I tell my growers, happy and healthy workers mean good work that translates into profit potential.

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The Central Coast vegetable producing counties are like the red-headed step-children of regulation implementation. It is just not like growing major crops in the Midwest or field crops in the Central Valley. When "Full Use Reporting" was implemented it was a real challenge because of the large amounts of information to handle. When counties started performing PUR data entry it was necessary to modify the state PUR computer program. The state field posting regulation was not working in Monterey County so they had to pass a more stringent county regulation. I feel that because minor crops are almost by definition the exception to the rule, they are written off when regulations are designed as a complication to be dealt with later. At this time EPA is facing neither the grave complications nor the lack of usefulness of certain notification requirements of WPS in Central Coast counties.

With the proposed changes in California, workers within one-quarter mile of a field during a restricted entry interval must be notified, rather than the previous state standard of all who were likely to enter the field. Field posting satisfies this requirement except when the labeling requires both written and oral posting. The logistics of accomplishing oral notification in vegetable production situations are very difficult.

There is a U.S. EPA slide show that illustrates their concept of a farm. It has a little white house, a big red barn, a silo and a field of corn. They show the grower giving oral warning to a few employees and showing them a calendar with the REI days crossed out. On the Central Coast the situation is much more dynamic. Ranches and field sizes are small. One quarter mile from any given field is likely to be on the next ranch. When there is a REI anywhere on the ranch requiring oral and written posting, there will not be any Norman Rockwell scene like the slide show.

Many different labor providers are on the ranch and they operate on more than one ranch on most days. Labor contractors, harvesting companies, PCOs, PCAs and

others show up at the field where they will work. All of these crews may need to hear all of the information listed in the rule for every field on the ranch subject to the warning, even if their work keeps them substantially confined to the area of one field. It could take some minutes to recite all this information, most of which has nothing to do with the tasks of the workers. Providing it is a logistical nightmare. Most growers have more than one ranch and deal with many independent businesses that have crews on the ranches.

I feel this is an undue burden on growers. They will be forced to go to great lengths to comply. The information provided will be of little more interest to the workers than the airline safety speech is to the seasoned flyer, who is thinking of something else while being told how to buckle and unbuckle the seatbelt. If the field is posted, it means "keep out." Why should somebody have to tell for example a lettuce harvesting crew of 40 persons about such things as "care of personal protective equipment required for early entry into treated fields, and the prevention, recognition and first aid for heat stress" related to another field a quarter of a mile away on the other side of the ranch? That crew is not going to leave the field they are working in. They really only need to know to not go into any fields other than those where directed and never go into a posted field.

What will suffice for "the location and description of the treated area?" Telling someone that lot 5a has been treated is not useful information unless that person understands where lot 5a is located. There are no signs on the lots. Could they point to "that broccoli field over there" and so identify it? There might be some confusion. Must a map be employed to show the workers where they are and where the treated field is? Can they say, "You see that field with all the signs posted on it that say KEEP OUT? That is the field I am telling you not to enter. It was treated with..."

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Robert, you have asked some excellent questions. I will watch and wait for some answers. But I have one for us all, and that is how is one to display pesticide record at the central location for 30 days after the re-entry interval has expired. I have a feeling the walls will be covered with paper. Keep the lines open.

Paul Baker
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The Task Force on Training Materials recommended that EPA keep track of all EPA-approved and EPA-developed materials as well as translations into other languages. Is anyone at EPA following through? State Extension Services need updates on this subject. We need a printed list that we can hand out or mail out that identifies these materials and how to get copies. I have developed a listing for WPS-related materials and their availability, but so far it doesn't list any materials in languages other than Spanish. I'd be glad to send a copy of my publication to someone at EPA so they can see what information is needed in this kind of a reference document.

The Nov. 1993 listing of WPS training materials available from EPA listed titles, gave brief descriptions, and identified their sources. It identified materials as having been developed either by EPA or by states, but did not state whether any of the state-developed materials are approved by EPA. An updated version of the Training Materials list, dated June 1994, nicely separates the materials into categories: employers, handlers, workers, and general information.

The new version still, however, does not clarify whether any of the state-produced materials are EPA-approved and could thus be used in verifiable training. This is a big problem for those offering verifiable training and to others who want to reduce their liability. With regular updates and a little more info, this EPA listing could be more helpful.

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EPA recently put together a list of WPS materials, titled: "Worker Protection Standard: Materials Developed by EPA, States and Other Organizations." The item is available from: Ms. Allie Fields, US EPA Office of Pesticide Programs (7506C), 401 M Street, S.W., Washington, D.C. 20460, (703) 305-7666. Allie would be very interested in receiving information about materials that are not on the EPA list. We are also working at getting this EPA list on the WPS-Forum, and hope to have it available soon.

The EPA manual "Protect Yourself from Pesticides-Guide for Agricultural Workers" has been translated into a variety of languages. EPA is working to get those translations typeset for publication, and would certainly be interested in hearing from organizations that might be able to help in this effort.

The WPS requires that information be presented in a manner that the workers and handlers can understand, such as through a translator. Where are employers going to find translators? There are a number of possibilities: churches and schools have strong links to the communities they serve, and may be able to suggest people who could act as translators. Medical facilities, police departments, and courts often need translators, and may be a source of information. Farmworker advocacy organizations may have bilingual staff that would be willing to assist in translating, or may know of others who could assist in translating. If there are any other suggestions out there, please post them.

The WPS sets requirements on the qualifications of the trainer: he or she must either be a certified applicator, be a currently designated trainer of RUP applicators, have attended an approved train-the-trainer program, or (for trainers of workers) have completed pesticide safety training for handlers. The translator must simply be able to translate what the trainer is saying and the questions that workers and handlers may ask.

Kay Rudolph
Worker Protection Program Manager, US EPA
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I've recently completed an 8-page digest of US EPA's 100-page "Protect Yourself from Pesticides - Guide for Pesticide Handlers." I omitted each unit's "opening and review questions," to condense the material to a judicious amount that still embodies the essence of required safety information.

The trim UC Cooperative Extension "Handler Training Digest" is available for \$1.50. Send check, payable to "County of Fresno," to Ag Personnel Management Program, 1720 S. Maple Ave., Fresno, CA 93702. Write "Digest" on the check margin. Also available, for \$3.50, is US EPA's set of 8 brochures, a "guidance package" on personal protective equipment and heat stress. I've packaged it as a single booklet to make the material more accessible to WPS handler trainers.

Steve Sutter
UC Area Farm Advisor, Fresno

UC Statewide IPM Project 1994 Train-The-Trainer Programs

for Trainers of Pesticide Handlers and Agricultural Fieldworkers

1. Programs for Trainers of Pesticide Handlers/Fieldworkers (Training workshop hours: 8 am - 5 pm at all locations. Cost: \$100.00 includes manual, other handouts, lunch, and refreshments. Space is limited to 40 participants at each location.)

September 20, 1994 - San Diego County

September 21, 1994 - Ventura County

September 23, 1994 - Monterey County

September 28, 1994 - Fresno County

[September 29, 1994 - Fresno County, if September 28 is sold out]

November 9, 1994 - Sacramento County

November 10, 1994 - Stanislaus County

November 15, 1994 - Napa County

November 17, 1994 - Butte County

2. Programs for Trainers of Fieldworkers (These programs will be conducted in Spanish. Training workshop hours: 8 am - 5

pm at all locations. Cost: \$40.00 includes manual, other handouts, and refreshments. Space is limited to 25 participants at each location.)

October 4, 1994 - Woodland

October 6, 1994 - Napa

October 11, 1994 - Modesto

October 12, 1994 - Fresno

October 18, 1994 - Salinas

October 19, 1994 - Oxnard

October 20, 1994 - El Centro

Locations and dates subject to change. Participation in these train-the-trainer programs meets the requirements of the California Department of Pesticide Regulation and US Environmental Protection Agency for trainers of pesticide handlers and agricultural fieldworkers under the Federal Worker Protection Act.

For further information or to receive registration materials, contact the UC Statewide Integrated Pest Management Project, IPM Education and Publications Office at (916)752-7691.

Pat Marer
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NASDA Files Worker Protection Standard Petition with EPA

WASHINGTON - Pursuant to the Administrative Procedures Act, the National Association of State Departments of Agriculture (NASDA) today filed a petition for rulemaking with the Environmental Protection Agency (EPA) requesting a revision to the Worker Protection Standard (WPS) for Agricultural Pesticides. "The petition was filed to correct serious problems with the Worker Protection Standard," said Texas Commissioner of Agriculture and Chairman of NASDA's Worker Protection Task Force, Rick Perry. "Making the changes suggested in the petition will meet one of the objectives Congress had when it delayed enforcement of the regulation."

NASDA suggested a number of major changes, including:

Continued on next page

* Reducing the worker training grace period from 15 days to 5 days beginning January 1, 1995, and maintaining the 5-year retraining interval;

* Providing a reduced level of personal protective equipment (PPE) for low-contact activities – consistent with the level required by the law passed by Congress – to reduce the risk of worker heat stress;

* Establishing a phased restricted entry interval (REI) which will encourage the use of less toxic chemicals and reduce the potential for worker exposure;

* Providing an exception – consistent with the law passed by Congress – from the regulation for professional crop advisors;

* Reducing the period of time that decontamination facilities are required to the length of the REI – the time when the potential hazard exists; and

* Allowing for the development and distribution of posting and training in the language spoken in the local area.

“Protecting farmworkers and those who handle pesticides from unreasonable risks of pesticide exposure is important to agriculture and the modifications suggested by NASDA will help to assure farmworker protection,” Perry continued.

“Adopting the NASDA recommendations would be a major step in assuring American agriculture that we have a sound sensible policy in place to protect agricultural workers – a policy that can be easily interpreted by regulators and regulations that don’t unnecessarily hinder a business’ ability to operate and prosper.”

Joining NASDA in the petition were the American Corn Growers Association, the Agricultural Retailers Association, the American Sod Producers, the California Grape and Tree Fruit League, DeBruyn Company, the Hawaiian Sugar Planters’ Association, Moore & Dorsey, Inc., the National Agricultural Aviation Association, the National Alliance of Independent Crop Consultants, the National Association of Wheat Growers, the National Corn Growers Association, the National Cotton Council, the National Council of Agricultural Employers, the National Farmers Union, the National Grange, the North Carolina Sweet Potato Commission, Inc., the Texas Cotton Ginners’ Association, and the Washington Growers League.

NASDA is a nonprofit association of public officials representing the Commissioners, Secretaries and Directors of Agriculture in the fifty states and four territories. □

Pesticide Illnesses More Common Outside Ag

Although most pesticide use is in agriculture, more than two-thirds of occupational pesticide illness cases in California during 1991 were from nonagricultural uses, according to a report released in May by the Cal/EPA Department of Pesticide Regulation. Of the 1,804

reported illnesses with a confirmed or potential link to pesticide use that year, 1,675 occurred on the job. Illnesses occurring outside the workplace, however, are probably more seriously under-reported.

Nonagricultural pesticide illnesses typically were caused by exposure to disinfectants in restaurants, janitorial companies, municipal water treatment plants, swimming pools, and hospitals. The two deaths in 1991 related to pesticide exposure were both cases in which the "victims" entered locked buildings where signs had been posted warning that the structure was being fumigated with methyl bromide [a victim of our school system? — *ed*]. A copy of the report is available from the DPR Worker Health and Safety Branch, 1020 N Street, Sacramento, CA 95814. (916) 445-4222. □

Aerospace Material Offers Advantages for Farm Worker Housing

Daniel McMann

A seasonal worker arriving in a farm area, a family in a remote village, a victim of a natural disaster, and a homeless person in an urban community may all face the need to have shelter quickly. They need protection from moisture, dirt, and insects that contribute to disease and threaten their very survival.

Daniel McMann, an architect in Santa Ana, California, has developed plans for housing fabricated of aerospace material that may meet such needs. Farm employers or housing developers who would like to consider further the application of this technology may contact Mr. McMann by phone at 714/979-4333 (or fax 714/957-6819).

There is great need for affordable, adaptable housing throughout the world. Duration of need ranges from very short-term to permanent. Natural and man-made disasters have created urgent housing shortages affecting all segments of society. Among the more predictable needs for cost-effective shelter are those of seasonal agricultural workers. Farm workers arriving for temporary jobs in an area too often find the decent housing stock fully occupied or prohibitively priced.

Many new arrivals as well as more settled residents end up having to accept housing that is substandard, overcrowded, unsafe, or otherwise illegally maintained. They may make their homes in a garage, shed, cardboard shelter, or family car. Their substandard or non-existent plumbing and sanitary facilities add to discomfort and health problems. Affordable housing in rural environments has tended to be on transitional land (between other uses) with inadequate sanitation and utilities and relatively high exposure to fire and flood.

Materials and production techniques developed by the aerospace industry under national defense contracts

now offer considerable promise for meeting the housing needs of farm workers and others. Seventy-pound panels of a thermoplastic matrix composite material can form the basis of a simple stand-alone shelter that is durable, well equipped, easy to assemble and disassemble, storable, relocatable, and economical. The composite is the only panel material, serving as structural system as well as exterior and interior enclosure skin. It has an integral color and a finish that provides long-term protection with no regular maintenance. Panels resist fire, moisture, effects of sun, and breakage.

The material can be shaped to provide watertight framing for all panel openings. Panel doors, windows, fasteners, and accessories can all be fabricated from the same family of materials. Mass-produced panels would each have standard openings for windows, doors, skylights, satellite dishes, and cover plates (if the opening is not needed). All openings except those for doors would be of the same size, to make most interchangeable. The accessories would be attached with a reversible adhesive rather than a hardware or mechanical fastener, so that all such items could be easily removed and replaced. In contrast, use of mechanical fasteners would particularly increase the difficulty of making repairs in remote locations.

A cavity between the enclosure surfaces of the panel can be used flexibly. Most of it would be filled with a foam insulation, but compartments within it could be used for such things as communication equipment, batteries, and water or waste storage. Power for a shelter built from these panels is provided by a photovoltaic (PV) system, the main elements of which are several wafer-thin PV panels on the exterior surface and a storage battery. The PV panel is connected to the battery, and the battery to outlets throughout the shelter, by wiring that runs through each panel cavity and by conductive fasteners from panel to panel.

The conductive fastener joining and passing power to adjacent panels is threaded into a bolt that is part of each panel. It has a thumb-turn mechanism that allows for connection of panels by hand, or simple tools at most. An unskilled person can work with these fasteners and assemble a shelter.

This kind of shelter system can be neatly shipped, stored, and delivered even to remote sites. Standard panel size is 8 feet by 8 feet by 3 inches. As many as 250 panels can fit into a standard shipping container for travel by land, sea, or air. The number of containers that can be taken in a load ranges from one per helicopter and two per truck up to 1,000 per container ship. Thus, the number of panels per delivery ranges from 250 to 25,000. Containers can be used to store panels near sites where they are not needed year round, or

centrally in regions through which they are to be deployed at different times of the year.

These single-material panels can be manufactured much more efficiently than many currently manufactured building systems that have multiple materials, finishes, and connectors. Cost of a panel is \$100 to \$150, making the cost for a simple shelter about \$10 to \$15 per square foot of floor area. The end product of a factory line is a complete module that can be placed immediately in a container for delivery anywhere and, upon arrival, can be handled and assembled by people without special skills or machinery. □

Honors for APMP Farm Advisor

Steve Sutter, Area Personnel Management Farm Advisor, based in Fresno, recently received the 1994 Norman Ross Award for distinguished achievement in conducting Cooperative Extension education. The award was presented by the University of California Association of Farm Advisors and Specialists at its annual meeting in Monterey.

Steve also has been elected to the board of directors of the Pesticide Applicators Professional Association, a California organization with 6,000 members. □

Labor Law Guide for Strawberry Producers

As part of a continuing education and information program on laws and regulations governing employment, the California Strawberry Commission's Regulatory Enforcement Working Group has sent its member growers, shippers, and processors a bilingual *Wage and Workers' Compensation Requirements for Strawberry Growers (Salarios y Compensaciones Requeridos de los Productores de Fresas)*. The 19-page guide is a quick reference for questions on laws and regulations on minimum wage, overtime, and workers' compensation for field workers. It includes phone numbers of government agencies.

"Laws governing employment of field workers are continually changing and becoming more complex. By compiling and updating informational guides, we hope to eliminate some of the confusion," according to Richard Uyematsu, chair of the commission's working group, which was formed in 1992. □

Workplace Violence

(continued from page 2)

the Workers' Compensation Act. An employee may file tort claims, however, for an injury resulting from intentional conduct by the company against the worker, for an injury caused by a co-employee's willful and unprovoked physical act of aggression or intoxication, or for an injury caused by a co-worker acting outside the scope of employment.

An employer's willful attack on an employee is not a risk or a condition of employment, so an employer's intentional assault on an employee is compensable under workers' compensation and may also be redressed in a civil action for damages. Furthermore, where an employee acts as the employer's agent in harming another employee, the employer can be liable for damages in a civil action.

The fact that an injury occurs in the workplace does not establish that it is compensable. An injury that grows out of a personal grievance between the victim and a third party is not considered to arise out of the employment if the assault occurred merely by chance during working hours at the place of employment or if the employer's premises did not place the injured employee in a peculiarly dangerous position. Where a third party intentionally injures the employee because of some personal motivation, there must be some work connection to establish compensability. Although injuries resulting from purely personal animosity unconnected with the employment are generally not compensable, the injuries may be held compensable if the employment increases or contributes to the risk of the assault, e.g., a situation where the assailant intends to injure the employer by committing a violent act against an employee.

Workers' compensation and the perpetrator. An employee who commits a violent act in the workplace, and who is injured while committing that act, may or may not be entitled to workers' compensation benefits. California workers' compensation law bars recovery of benefits in the following circumstances:

- Where the injury is intentionally self-inflicted;
- Where the employee willfully and deliberately causes his or her own death;
- Where the injury arises out of an altercation in which the employee is the *initial physical aggressor*; or
- Where the injury is caused by the commission of a felonious act or of a crime for which the employee has been convicted.

The third exception bars recovery only when the injured employee was the initial physical aggressor, who is not necessarily the person making the first physical contact. Accordingly, if two employees are injured during a fight, only the employee who is the "initial physical aggressor" will be barred from recovering workers' compensation benefits.

Practical Action for Employers

Little's seven-step plan for addressing workplace violence. The Little firm, in response to the phenomenon of workplace violence in the 1990s and employers' growing legal obligations to control it, has developed a seven-step practical approach. It includes recommendations from trauma experts and security consultants. (See, for example, White, Hatcher, "Violence and Trauma Response," *Occupational Medicine: State-of-the-Art Reviews*, Vol. III, No. 4, Oct.-Dec. 1988, Handley & Belfus, Inc., Philadelphia, pp. 677-94.)

- Little 1: Make preventing and controlling workplace violence a priority, and form a team of key employees to develop, review, and implement policies dealing with violence.
- Little 2: Talk with employees and supervisors about early warning signs of potentially violent behavior and steps to be followed in responding to and investigating an incident of workplace violence.
- Little 3: Increase physical security measures, and develop a relationship with local law enforcement authorities.
- Little 4: Develop crisis procedures for responding to an incident of workplace violence.
- Little 5: Consider the use of the courts to prevent and redress incidents of workplace violence.
- Little 6: Make efforts to prevent workplace violence by properly prescreening employees, consistently enforcing workplace rules, and using an employee assistance program and medical care resources.
- Little 7: Establish clear internal and external lines of communication to avert and respond effectively to crisis situations.

Make preventing workplace violence a priority. Any serious program for addressing workplace violence must begin with the establishment of a priority on recognizing workplace violence as a problem and developing a practical response. To establish this priority, an employer should form a team of key employees and give the team responsibility for developing a preventive plan as well as for being available to deal with incidents that may arise.

First, the team should assess the seriousness of the problem of workplace violence in the enterprise's particular industry and area. Second, the team should assess the employer's readiness for dealing with workplace violence. This assessment will range from a review of the security measures to the training of supervisors and lower-level management in diagnosing early warning signals of potential employee violence. If the operation has an injury and illness prevention plan, as required in some states, the plan may guide assessment of readiness to deal with workplace violence. Third, the team should become advisors to the employer on workplace violence. Meeting this responsibility requires an understanding of the psychology of workplace violence, familiarity with other employers' experiences with workplace violence, and basic knowledge of the legal obligations.

Fourth, the team can serve as a liaison with specialized resources from the community. It should be able to bring in appropriate legal assistance and to reach out to counseling groups, law enforcement, and even influential community groups. Fifth, the team should be responsible for educating employees about workplace violence. Finally, the team must be responsible for developing an action plan to deal with an incident when it arises.

Guidelines for supervisors. Under the direction of the management team, supervisors should receive education and guidelines for the prevention of violence in the workplace.

□ Early warning signals

According to Dr. Hatcher, there is a definite pattern of escalation leading to violent behavior, and individuals give clues when they test their boundaries. Supervisors should be aware of the following clues:

Ominous threats — such as "bad things are going to happen" to a certain person or "that propane tank in the back could blow up easily."

Threatening actions — such as intimidation of others or attempts to instill fear in co-workers. Menacing gestures and flashing of concealed weapons in the workplace could be ways of testing reactions to their conduct.

Bizarre thoughts — such as perceiving that the world is falling apart or expressing a highly overstated sense of entitlement to a promotion that was denied.

Obsession — which is likely to be expressed by holding a grudge against a co-worker or supervisor or, in some cases, a fascination with an unrequited romantic interest.

Supervisors should be trained to spot these telltale signs. Employees should be encouraged to report any threat by a co-worker to their supervisors, who can further investigate the situation.

□ Investigating complaints

The employer must take threats of violence seriously and should not assume that a disgruntled employee was merely blowing off steam. The employer should assure any complaining worker that reporting the incident was the proper thing to do. Additionally, the employer should assure the employee that a prompt, thorough investigation will occur and should ask him or her for any suggestions on minimizing the risk of a violent act.

For example, an employee reporting that her spouse had threatened to kill her at work prompted a California employer to move the employee's office to the second floor of the building. When the husband arrived at the workplace and began searching through the offices for her, there was time for a prewarned security force to detain the husband until law enforcement authorities could be summoned. The husband was later charged with carrying a concealed weapon and enjoined from entering the employer's property.

In conducting an investigation, the employer should interview the person who made the report to obtain such information as: (1) □ who made the threat; (2) □ against whom the threat was made; (3) □ the specific language of the threat; (4) □ any conduct that would substantiate the belief that the person making the threat intends to follow through on it; (5) □ names of any witnesses to the alleged conduct; (6) □ the time and place of the incident; (7) □ threats or violent conduct by the alleged perpetrator before this incident; and (8) □ any other information that could help the employer to perform an investigation and to prevent the threat from being carried out or violent conduct from occurring in the workplace.

After beginning the investigation and determining that the threat is genuine and a violent act is perhaps imminent, an employer may decide to suspend the potential perpetrator with or without pay, pending conclusion of the inquiry. If it is necessary to meet with other witnesses to determine whether the threat is genuine, the employer should do so immediately. As quickly as possible after interviewing the person reporting the incident and any witnesses that person has named and after documenting all of the interviews, the employer should decide how to approach the accused.

Undoubtedly, fairness requires that the suspect's side of the story be told. However, the employer might take appropriate security measures before meeting with this

individual. If the threat is against a specific supervisor, for example, another supervisor should discuss the issue with the threatening employee. Under no circumstances should an employer ask a supervisor who is the intended victim to conduct the investigation or the interview. Where the allegation of a threat is believed to be genuine, the interview may be conducted by a specialist and in the presence of company security personnel or, in unusual circumstances, local police officers. Involving the police often underscores to the alleged perpetrator the seriousness of the threat and may subsequently help in convincing the court to grant a restraining order. During such an interview, the employer should normally not communicate any conclusions regarding who was believed, but rather receive the alleged perpetrator's side of the story.

When discussing the threat with the alleged perpetrator, the employer should take care to minimize the possibility of a lawsuit by that person based on the investigation. For example, threatening an employee with criminal prosecution if he or she refuses to come to the office to discuss the incident could constitute the tort of false imprisonment. It is important, however, to make an attempt to hear the alleged perpetrator. A balanced investigation may not only yield pertinent information but also be evidence of good faith, if it becomes necessary to defend against a wrongful discharge or other suit evolving from the eventual termination of the employee. The tone of the discussion should be nonconfrontational and designed merely to obtain the alleged perpetrator's side of the story. His or her feeling that the interviewer is trying to understand another side of the story could aid the investigation and reduce the likelihood of a violent response. Of course, once serious violence has occurred and an arrest and criminal prosecution are likely, an interview with the alleged perpetrator may have lower priority or be substantially delayed.

Following the investigation, the employer should report to the complaining party on the conclusion as well as any planned affirmative steps to control the situation. In finalizing such a report, the employer should consider how it would appear if 12 □ months later the alleged perpetrator attempted to shoot the complaining party. If the report demonstrates that all the reasonable steps were taken, the employer has very likely met its obligation even if subsequent violence occurs. On the other hand, if the employer makes very weak preventive responses, a subsequent event such as a shooting could open the door to legal liability.

Security of the work environment. Employers should have in place a comprehensive plan for maintaining security. Many employers have developed such a plan

as part of an injury and illness prevention program. Others, based on their locations, have long ago implemented tight security measures to deny outsiders access to company facilities. The employer should establish a relationship with local police and sheriff's departments well in advance of an incident. Local law enforcement agencies may prove to be an excellent source of information on experiences of other companies in the area, as well as suggestions on possible security precautions.

Crisis procedures. The planning process demands the development of crisis procedures in the event of an incident of workplace violence. In general, the employer should inform employees with a need to know of alleged threats of death or serious bodily injury. The speed with which these threats are communicated will vary with the circumstances. An immediate threat of death may not allow for the thorough investigation that would normally precede a report being issued by the employer. Additionally, the employer should limit its communication to those employees who need to know. Further communication could be viewed as an abuse of the qualified privilege that otherwise protects the employer from liability for defamation should the alleged perpetrator be able to establish that he or she did not make the threat or engage in the unacceptable conduct.

On the other hand, the employer must ensure that all possible victims are warned of the risk so that they can take reasonable precautions. Where the threat is against the company as a whole, the employer should warn all potentially affected employees. Courts are likely to permit an employer's statement to potential victims, because courts have permitted employers to release the results of investigations of employee misconduct. At the same time, care must be taken to make such communications in a manner that does not unduly frighten employees.

Use of the courts.

Restraining orders

An important component of plans to control workplace violence is to review the types of legal relief that may be available to an employer. State law may provide a procedure for obtaining a court order that prevents an alleged perpetrator from gaining access to the intended victim. Such an order does not guarantee that violence can be prevented but offers a preventive step to reduce the risk of violence occurring. Where such provisions exist, the court probably has authority to order the perpetrator not to telephone or make other contact with the intended victim, as well as to stay a specified distance away from the victim and from the victim's residence and place of work. These stay-away

orders have the benefit of allowing the intended victim to contact the police to have the perpetrator arrested before violent behavior actually occurs.

Detention for psychiatric evaluation

Another legal avenue available in most states is to detain the perpetrator for psychiatric evaluation. In California, Welfare and Institutions Code section 5150 authorizes a peace officer and certain professional persons to detain an individual for up to 72 hours for evaluation and treatment in a county-designated facility if there is probable cause to believe that the individual poses a danger to others or to him or herself. To justify detention under section 5150, facts must be known by the peace officer, or designated professional, that would lead a person of ordinary care and prudence to believe, or to have a strong suspicion, that the person to be detained is mentally disordered and dangerous.

Prescreening employees and enforcing rules.

Preemployment screening practices

There are several steps that employers should take to protect themselves against liability for negligent hiring. For example, an employer should carefully review all information on employment applications and résumés before hiring an applicant. The employer should also question the applicant about any gaps in his or her employment history that could represent time served for violent crimes. Further, the employer should contact each prior employer to verify dates of employment and positions held. The employer should also request from prior employers such information as the applicant's reliability, honesty, and tendency for violence. The employer should document its investigative and screening efforts. The employer should not offer an applicant employment until the screening process is completed. Finally, employment applications should advise the applicant that misrepresentations or false information will result in denial or termination of employment. Employers are cautioned to consult with counsel before establishing procedures for background investigations.

Consistency in enforcing workplace rules

Notwithstanding an employee's good personnel record, supervisors should not make special accommodations to anyone who threatens others or who has shown a propensity for violence. Part of taking threats and violent behavior seriously requires a certain measure of discipline on the supervisor's part. Instead of *terminating the employee on the spot*, supervisors should evaluate the situation and seek advice from an occupational physician or employment counsel, if needed. If immediate action is required, a suspension or adminis-

trative leave until a proper investigation can be completed may be the best course of action.

Conclusion

Incidents of workplace violence should not be ignored. The magnitude and increasing frequency of such incidents should be sufficient warning to employees and employers alike that they are not immune from this calamity. □

Resources

Compilation of ag-pertinent safety orders now available. Farmers who want to meet their legal responsibilities often have trouble simply getting to know about the rules that they are supposed to follow. In the realm of workplace safety, one general obligation for California employers is to observe every applicable safety order issued under the Occupational Safety and Health Act (Cal-OSHA), but many have found access to those orders to be expensive, cumbersome, or both.

A new reference book developed under APMP sponsorship will help alleviate this problem for farm business operators. *Selected Safety Orders Affecting Agricultural Employers*, Publication APMP001, contains the general industrial safety orders (GISOs) that are most likely to apply to agricultural work. It includes, for example, rules regarding field sanitation, vegetable-trimming saws, hand and portable power tools, transportation of employees and materials, and tractors. Both a detailed table of contents and a subject index help readers find regulations that pertain to a specific interest.

The 134-page publication was developed by Stephen R. Sutter, APMP Farm Advisor, and L. George Daniels III of the Farm Employers Labor Service. Order the book by title and number from ANR Publications, Dept. NR, University of California, 6701 San Pablo Ave., Oakland, CA 94608-1239. A check payable to UC Regents for \$10 will cover tax, postage, and handling. Orders billable to VISA or MasterCard are accepted by phone at 800/994-8849 and by FAX at 510/643-5470.

Farm Safety (La Seguridad Agrícola). AgSafe and the University of California Farm Safety Program have combined their newsletters into a new quarterly publication in English and Spanish, available free of charge. The current issue includes a legislative and regulatory summary, a safety training insert on heat and overexertion, plus listings and reviews of new training videos. To be added to the mailing list, contact Bill Steinke or Jim Meyers at the Department of Biological and Agricul-

tural Engineering, University of California, Davis, CA 95616 (phone: 916/752-1613; fax: 916/752-2640).

Worker Protection Standard training materials. Non-profit organizations and agricultural employers can receive quantities of the manuals *Handbook for Pesticide Handlers* and *Handbook for Agricultural Field Workers* free of charge at four locations in California:

Sacramento — California Farm Bureau Federation, 1601 Exposition Boulevard. Monday through Friday, 8 a.m. to 12 noon. Contact Penny Wilson or Lorrel Weise at 916/924-4051.

Salinas — SoilServ, 1427 Abbott Street, Monday through Friday, 8 a.m. to 12 noon. Contact Yvette Black, 408/422-6473.

Fresno — Target Specialty Products, 2478 N. Sunnyside Avenue, Monday through Friday, 8 a.m. to 5 p.m. Contact Sandy Patterson, 209/291-7740.

San Diego — Target Specialty Products, 7675 Formula Drive, Suite D, Monday through Friday, 8 a.m. to 5 p.m. Contact Lynette Shires, 619/586-1933.

California Hazard Communication Standard for Pesticide Handlers, 16-page guide for agricultural employers developing pesticide-specific handler safety training, has been revised by Steve Sutter. The booklet includes two brief sample pesticide-specific training programs. Send \$2, payable to "County of Fresno," to APMP, 1720 S. Maple Ave., Fresno, CA 93702. Purchasers will be notified of any modest regulatory changes effective in 1995.

Copies of Human Resources Instructor's Manual still available. *Labor Management in Ag: Cultivating Personnel Productivity*, compiled by Gregory Encina Billikopf, presents cases, role-plays, and other teaching materials contributed by labor management specialists from the United States and Canada. Subjects include selection, promotion, performance appraisal, wages and benefits, communication and supervision, training, discipline, turnover, the family farm, and labor relations. Because supplies are limited, the manual can be sent only to those who teach or plan to teach agricultural human resource management in classes or workshops. To obtain a free copy, write on your university or consultant letterhead to Gregory at UC Cooperative Extension, 733 County Center 3, Modesto, CA 95355 or FAX (209/525-4969). A free copy of the Spanish pesticide safety teaching game, *La loteria de los pesticidas*, may also be obtained with the book.

Free telephone information service for farm workers and others. Bilingual staff are available on Linea Campesina, 1-800-789-9993, from 7:00 a.m. to 6:00 p.m. Mondays through Fridays (messages can be left at other hours) to answer questions on health, education, en-

ergy assistance, and housing. The service is a project of the Farm Worker Services Coordinating Council and the Department of Economic Opportunity.

RCAP/MESA Newsletter is a quarterly publication of the Rural Community Assistance Program, which, through the MESA Program, provides technical assistance on environmental health issues to migrant and community health centers, public health agencies, and other organizations working on behalf of migrants and seasonal farm workers. Subjects include water, waste disposal, housing, field sanitation, pesticide safety, and occupational health needs. For more information, contact RCAP at 602 South King Street, Suite 402, Leesburg, VA 22075 (703/771-8636).

Workers' Compensation Monitor, a newsletter published six times a year, presents articles on national workers' compensation trends and policies, as well as abstracts of published studies. The editor is John F. Burton, Jr., Director of the Institute of Management and Labor Relations at Rutgers University in New Jersey. (See his article "The California Reform from a National Perspective," in *Labor Management Decisions*, Spring 1994.) Subscriptions are available at \$160 per year from LRP Publications, 747 Dresher Road, P.O. Box 980, Horsham, PA 19044-0980. Phone: 800/341-7874.

Videotape, ATV Safety on the Farm, presents a concise overview of safety basics in using all-terrain vehicles for both farm operators and employees. Each videotape is available for \$35 plus \$3.50 shipping and handling from The Ohio State University, Dept. of Agricultural Engineering, Extension Safety and Health, 590 Woody Hayes Drive, Columbus, OH 43210-1057 (phone 614/292-6519).

Safety training videos. Visual Education Productions, California Polytechnic State University, San Luis Obispo, CA 93407, offers a catalog of its training videos on safety in agriculture, horticulture, landscaping, lawn care, and in workshops. Orders are taken by phone (800/235-4146) or by FAX (805/756-5550). □

Safety Tip from Richard Bruce

Last year, I asked a worker to use ear plugs in an almond huller. He said he would not be able to hear machine problems with ear plugs. I asked him to try them, at least for a couple of hours. Two days later, when I returned, he thanked me. He could no longer stand the noise in the huller without them, and he could hear differences in the machinery better. The law requires ear protection at anything over 85 decibels. □

Events

Employment and Safety Regulations Seminar for Southeast Asian Refugee Farmers. *Wednesday, August 17, 9:00 a.m. to Noon.* Fresno: UC Cooperative Extension office, 1720 S. Maple Ave. Free assistance will be provided in understanding rules related to employment, pesticide application, and safety. Hmong and Laotian translators will be present. Contact Steve Sutter at 209/456-7560.

How to Comply with the New Worker Protection Standards for Agricultural Pesticide Use. *Thursday, August 18, at two times and locations: 8:00 to 10:30 a.m.,* Ventura (Ventura County Government Center, Lower Plaza Assembly Room, Administration Building, 800 S. Victoria Ave.) *and 1:00 to 3:30 p.m.,* Santa Barbara (Santa Barbara County Hospital Auditorium, San Antonio Building, 300 N. San Antonio Rd.). Speakers at these two free seminars will be Kay Rudolph, of U.S. Environmental Protection Agency, and Steve Sutter, UC Agricultural Personnel Management Farm Advisor. For more information, phone the Ventura County Cooperative Extension office at 805/645-1451. Many more meetings on the WPS will be held around the state as the January 1, 1995, date for full implementation approaches. Watch for announcements from UC Cooperative Extension and other organizations.

Train-the-Trainer Programs will be held in the Fall by the University of California Statewide IPM Project. Details are given page 11 in the article on the WPS-Forum.

Ag Employers' Seminar. *Thursday, November 17, 8:00 a.m. to 10:30 a.m.* Sponsored by area Employment Development Department offices and the UC Agricultural Personnel Management Program as part of the AgFresno farm equipment show. Topics will include immigration compliance, workers' compensation, and worker transportation. For information, phone Steve Sutter at 209/456-7560. □

ADA Now Covers Employers of 15 or More

As of July 26, 1994, provisions of the Americans with Disabilities Act (ADA) have been extended to organizations with 15 or more employees. When it first took effect two years ago, ADA covered only employers of 25 or more. (See article on ADA in *Labor Management Decisions*, Vol. 2, No. 1, Winter-Spring 1992.) □



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NOTE: We inadvertently omitted *Norman J. Hetland*, Staff Research Associate, Department of Agricultural and Resource Economics, UC Berkeley, from the list of contributors to the special report on workers' compensation, Spring 1994 (Vol. 4, No. 1).

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