

DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director

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AB 547 Advisory Committee
DRAFT – MINUTES OF MEETING
Friday, January 27, 2023
 Via Video/Audio Conference

In Attendance:**DIR:**

Deanna Ping, *DIR Chief Deputy Director*
 Sulma Guzman, *Legislative and Regulatory Affairs, Deputy*
 Kumani Armstrong, *Special Counsel*
 Zakiya Ali, *DLSE*
 Dave Gurley, *DLSE*

Committee Members:

Yardenna Aaron, *Maintenance Cooperation Trust Fund*
 Anabella Aguirre, *Ya Basta*
 Sandra Barreiro, *SEIU California State Council*
 Chris Bouvier, *ABM Industries Inc.*
 Sandra Díaz, *SEIU United Service Workers West*
 Andrew Gross Gaitan, *SEIU United Service Workers West*

Beatriz Guillen, *Maintenance Cooperation Trust Fund*
 Rashida Harmon, *DFEH*
 Sandra Henriquez, *VALOR*
 David Hernandez, *Servicon Systems, Inc.*
 Stacey Jue, *ABM Industries Inc.*
 Veronica Lagunas, *Ya Basta*
 Maria Nieto, *Maintenance Cooperation Trust Fund*
 Cassie Peabody, *Maintenance Cooperation Trust Fund*
 Tony Ruiz, *SEIU United Service Workers West*
 Maricela Salinas, *Maintenance Cooperation Trust Fund*
 Christian Valdez, *Building Skills Partnership* (attending on behalf of Luis Sandoval)
 Laura Zwick, *ABM Industries Inc.*

Interpreters:

David Myers, *DIR Interpreter*

I. Approval of Minutes

- **Motion:** Approval of the minutes from the December 15, 2022 meeting
- **Vote:** Tony Ruiz motioned to approve the minutes from the December 15, 2022 meeting. Chris Bouvier seconded.

II. Janitorial Advisory Committee's Role in the Recommendation Process

- **Motion:** Move item V. (Janitorial Advisory Committee's Role in the Recommendation Process) to become III on the Agenda.
- **Vote:** Andrew Gross Gaitan motioned to move Agenda item V. to be discussed next. Tony Ruiz seconded.
- Can the JAC reject applications?
 - LC 1429.5 (f) states, "The training advisory committee shall **recommend** the qualified organizations to the director."
 - We're in agreement that in order for a meaningful recommendation, the JAC will

- need to see what's provided by the applicants.
 - JAC will see the applications and all the documents submitted to the LCO/DIR. LCO will provide with some redaction.
- LC 1429.5 (h) states "The director shall maintain the list of qualified organizations. The list shall be updated by the director with assistance from the training advisory committee at least once every three years. The director may approve qualified organizations on an ongoing basis ..."
- The statute states the Committee is able to recommend, but it is the director who has the ultimate responsibility to approve an applicant and maintain the list. Any change to this position would require a legislative change.
- If the JAC has concerns regarding an applicant, the JAC is going to be provided the opportunity to plead that case to publicly discuss those concerns with LCO/DIR.
- Labor Commissioner wanted the committee to know that she has been heavily involved in her career in the janitorial industry, and wanted to remind everybody that both DIR/LCO have a strong history of working and collaborating with stakeholders. We're committed to maintaining that collaboration and fostering the trust necessary to create a model program in the janitorial industry.
- Discussion:
 - Tony Ruiz
 - 2-step process. One, an organization needs to secure the recommendation from the JAC. Second, the director has the final say to approve.
 - Sandra Henriquez
 - In reference to LC 1429.5 (h), where the ultimate decision lies with director. Is there an instance where the director can go against the recommendation of the JAC?
 - Dave Gurley
 - Yes, theoretically, it is possible the director can go against the recommendation of the JAC. It may be an unlikely event that the government will have an opposing view from the committee.
 - Deanna Ping
 - This will be an interactive process. We don't know how many applications we will receive. One of the criteria, for example, is cultural competency and language. What we would ask from the committee is that we be consistent as possible with how we apply that criteria. We have to be consistent with our expectation. If there is something that we would want to have further discussion, we would pose those questions.
 - Tony Ruiz
 - Let's say we receive 10 applications. JAC recommends 5 out of the 10. The director selects within the 5. Would the director be able to select outside of the 5 (no recommendation from the JAC)?
 - Dave Gurley
 - That would be a case where there'd be a discussion. In the unlikely event that we see an applicant where on paper they've qualified with every criteria for both peer trainers and the QO, and the JAC does not make a recommendation for whatever reason, we'd have a discussion as to why the JAC did not recommend them.
 - Deanna Ping
 - In the spirit of the statute, if the JAC is not making a recommendation, that

means they do not fulfill the requirements. We need to understand what requirements they don't fulfill. That's the expertise of the committee. Speaking theoretically, the application would have to qualify. If the JAC were to have a conversation that this entity did not qualify, the DIR/LCO would have questions and it would be a discussion to understand why. We can't just paint a universal brush on something that we've never even seen on an application, or had a discussion as to what would or would not qualify or count as a recommendation.

- Sandra Henriquez
 - There is an assumption if someone is qualified, there would be a recommendation from the committee. If an organization is not qualified, there would be no recommendation. How did DIR determine if the organization is not qualified? It is likely this could happen. Without a recommendation from the committee, how could DIR approve an organization without the recommendation of the committee?
- Dave Gurley
 - On behalf of the Labor Commissioner, I do not have the authority to say at this meeting that the JAC has the final say with respect to recommendations. JAC shall recommend. How does DIR override a non-recommendation?
- Tony Ruiz
 - Statute does not support the JAC having the final say. It does, however, state that the JAC needs to make a recommendation.
- Kumani Armstrong
 - What if the JAC does not recommend any applications? Would DIR be precluded from going back to those application and asking questions about why or why not?
- Andrew Gross Gaitan
 - If DIR believe the JAC's reason for rejecting an applicant is unjustifiable, could DIR override this portion of the law that says the committee shall recommend?
- Deanna Ping
 - If the JAC is not recommending an organization, they are saying they do not qualify for one of the reasons laid out. So DIR needs to understand why they do not qualify. Which one of the criteria is the applicant not meeting?
- Andrew Gross Gaitan
 - If there's sort of gray here as to whether a recommendation is a prerequisite or not, then I don't think we're on the same page.
- Sandra Diaz
 - The way the statute is laid out, it was to include the experience/expertise from different stakeholders. It's okay to be strict with the approach. The recommendation of the JAC matters because it's vetted by key stakeholders. JAC would be concerned if the director is going to be making decision on organizations that weren't deem qualified by key major stakeholders.
- Deanna Ping
 - If the JAC states an organization does not qualify, that means the organization did not meet one of the criteria laid out in the statute.
- Tony Ruiz
 - I would imagine that the director would be very low to appoint an organization to be on the list without having the JAC's recommendation because the statute and all those things in place. At the same time, the notion that the JAC would

not recommend anyone over something arbitrary may not be worth having a productive conversation over.

- Dave Gurley
 - Trust the process moving forward. I don't know what other way we can go, unless you need some blanket statement that I'm not authorized to say today.
- Deanna Ping
 - Just to recap, the committee is charged with recommending the QOs to the director as outlined in 1429.5 (f). You have to meet those criteria to be qualified. If an organization is qualified, they would be recommended. So if the committee does not recommend someone, they would have to not meet one of the criteria. So if it's cultural competency or if it's the training that the peer trainers received was not at an institution that this committee recognizes as legitimate, there will be different iterations of which of the criteria will come into play. From DIR's standpoint, we need the expertise of this committee to explain to us which of the criteria was not met. Therefore, the organization is not qualified, which means it's not recommended. If there was something DIR had questions on, then we would ask those questions to better understand why the organization did not qualify.
- Andrew Gross Gaitan
 - If we see a training partner or someone in leadership is questionable, where concern or problems may arise. For example, we reported an employer recently to DIR who had done none of the DFEH training since the requirements began. This came to our attention because there was a woman who made allegations about rape by a senior manager there. If the senior manager appears as one of the leadership of a training partner, there's nothing in the statute that says a rapist cannot be on your leadership group. There would be these situations where there is a real mistrust of leadership of an organization or a player based on something about their record and conduct. Character, intent, history that cannot be nailed down to one of the checklist items. I think we could have very real disagreements about who's qualified or not that are difficult to tie to word for word to one of the elements of the statute. That's the concern I feel as a member of this committee.
- Tony Ruiz
 - There is some substantial subjectivity to the criteria. If we have a person who's had this history, I think you could fairly say that we are not recommending this organization. We believe that reflects a lack of cultural competence.
- Dave Gurley
 - DIR will listen if the committee is not recommending an organization. For example, if there was a rapist in leadership (Andrew's example).
- Sandra Diaz
 - There will be an application process that the committee will review. The committee will then recommend. In the event that there is a disagreement, or further discussion or clarification to be made, there will be discussions that will take place between the administration and the committee to resolve with some consensus on the recommendations that are going to the director. We would like to see the development of a process that upholds the intent of the bill.
- Yardenna Aaron
 - In 3-7 years, this will be a national model. This will be referred to as how

innovative thinking can help to stop sexual harassment in the workplace. Other states might adopt this model too in the future.

- Veronica Laguans
 - I need some clarification for sections 1429.5 (f) and 1429.5 (h).
- Deanna Ping
 - 1429.5 (f) – JAC to look at the pieces that make the organization qualified. This will serve as the guide the JAC will use with the recommendation.
 - 1429.5 (h) – The statute states that at a minimum the committee has to convene at least once every 3 years, but the director can approve on an ongoing basis.
 - We're going to have this committee convene much more frequently than that, especially in the front end. We don't know how many applications we're going to receive. We are going to need that expertise from the committee.

III. Implementation Plan and Enforcement Deadlines

- Timeline
 - February 1, 2023: LCO finalizes and posts the QOAF.
 - February 1, 2023: update LCO website to announce the application process.
 - February 1, 2023 through March 1, 2023: LCO accepts QOAFs and supporting documents for the first round of applicants.
 - March 1-15, 2023: LCO review and redaction
 - March 15, 2023, LCO prepares list of applicants.
 - March 15, 2023, the list is sent to DIR; DIR sends the list, applications and redacted documents to the JAC.
 - Schedule JAC recommendation meetings for Qualified Organization no later than April 15, 2023.
 - The first set of QOs approved and posted on LCO website TBD.
 - March 1, 2023 through November 1, 2023: LCO accepts QOAFs and supporting documents on a rolling basis.
 - Additional Recommendation meetings scheduled as necessary.
 - 6-month Grace Period for enforcement (Begin enforcing November 1st).
- Discussion
 - Chris Bouvier
 - This is a very compressed timeline. What kind of trouble comes from extending the timeline a little further, if needed, to do this with appropriate reflection and an appropriate discussion of the organizations that apply? Who is watching this besides the industry or the JAC? Would the LCO get in trouble? It might be helpful to have a little more breathing room for employers on a compliance standpoint.
 - Dave Gurley
 - We don't know who's watching. The pressure is primarily a self-imposed responsibility. Need to get workers trained. I have no problem going back to the Labor Commissioner advising her as to why the committee feels they need more time. If extension is needed, I suspect the Labor Commissioner will listen.
 - Andrew Gross Gaitan
 - Concerned about the timeline. Maybe consider a 60-90 day window for the first round of applicants instead? This currently 4+ week turnaround for the applications seems like it could be subject to challenges.

- Sulma Guzman
 - Where in the timeline, would you say, extending?
- Andrew Gross Gaitan
 - The 3rd bullet, where it states Feb 1-March 1 to accept applications. That seems like an awfully small window.
- Sulma Guzman
 - Extending application period from Feb 1 to April 1 or May 1?
- Deanna Ping
 - We also need to post the training curriculum because the organizations would probably need to see it.
- Chris Bouvier
 - A little bit of breathing room would be welcomed, especially on the employer side.
- Sulma Guzman
 - 2/1-4/1? (60 days) sufficient time to submit apps. We can see sooner than later on what apps come in. Any reactions from JAC? We still need agreement on the form. If JAC needs more edits on the form, then this timeline goes out the window. Or should we consider an extension of 90 days?
- David Hernandez
 - In support to extend application period
- Andrew Gross Gaitan
 - Maybe add FAQs in support of the application process on the website?

IV. Request for Prescriptive Documents Listed on the QOAF

- We cannot require specific documents as this is an “underground regulation”.
- *Regulation*: a regulation is defined in Government Code section 11342.600: Regulation means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.
- *Underground Regulation*: means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA. Title 1 CCR section 250
- According to the Office of Administrative Law (OAL), if a state agency issues, utilizes, enforces, or attempts to enforce a rule without following the APA, which it is otherwise required to do so, then the rule is called an underground regulation. State agencies are prohibited by law from enforcing these underground regulations.

V. QOAF

- Bottom of page 1 – Added section b. [*In addition, if you are a training partner, please provide documentation showing you are a nonprofit, worker center, or labor organization with at least two years of demonstrated experience in addressing workplace sexual abuse, immigrants’ rights advocacy, and worker rights advocacy.*]
 - Language directly from the statute

- Top of page 2 – Add language [*A QO, on its own or through its training partner, must comply with all of the following (Nos. 1-4:)*]
 - Language included because Labor Code 1429.5 (f) states that a qualified organization shall be a nonprofit organization, that on its own or through its training partners complies with the all the following qualified organization requirements. Based on the plain language of the statute, there’s a scenario or hypothetical envisioned by the drafters in which the training partner must comply with all of the requirements of QO.
- Top of page 1 – Added notification to all applicants [*Applicants are hereby notified and acknowledge that these application materials will be provided to the training advisory committee for review. Applicants further understand that application materials – including employee names – will be published on the DIR website in accordance with the Bagley-Keene Open Meeting Act.*]
 - Include to protect the DIR that we’re not providing any PPI.
- Page 2 (2/3 way down) – Added sentence for peer trainers [*If yes, please provide documentation showing that you have the training, knowledge, and experience necessary to train nonsupervisory covered workers.*]
- Questions/Comments:
 - Chris Bouvier
 - Minor change under section 4.a. – Change “you” to “each peer trainer”
 - Andrew Gross Gaitan
 - Can applicants submit via electronically or mail-in?
 - Zakiya Ali
 - Applicants will be able to submit via electronically or mail-in. Regardless of method, the docs will be reviewed and redacted by LCO before providing to the JAC for review.
 - Sulma Guzman
 - To recap, the form will go up on the Labor Commissioner’s website. Organizations wishing to apply will fill out this form and they would also be able to draw from the appendix information the LCO will post. Applicants will be able to submit via mail, hand delivery, or electronically. Once the LCO processes the applications, they will perform a redaction review. Depending on volume and what types of documents are received, LCO will send via email to the JAC and also post these documents to the advisory committee website to comply with the Bagley-Keene Open Meetings Act.
 - Andrew Gross Gaitan
 - Would the QO and the training partner submit separate packets? Brings up the process question. Would JAC look at each entity separately?
 - Dave Gurley
 - Yes, it would be cleaner if the QO and the training partner submitted separate packets, so that we can review and talk about them individually.

VI. Appendix

- Reiterated all the statutory requirements for both QOs and peer trainers.
- Went through the committee suggestions/recommendations/comments and inserted into appendix
- Currently a work-in-progress. Valuable tool that can be used. We just have to make it more comprehensive and also to put it in the proper format.
- Questions/Comments:

- Chris Bouvier
 - This could be a helpful tool. I know Andrew put a lot of work into his suggested documents, and I think if you have people applying, it would be a helpful tool for anybody applying to see the suggestions.
- Andrew Gross Gaitan
 - I think the appendix will need to go up at the same time as the posting of the application.
- Dave Gurley
 - If that's the case, we're going to need to work together and get more suggestions from you, either more samples of documents, or even more descriptions. I'm not sure I'd feel comfortable having the appendix go up with what we have now.
- Andrew Gross Gaitan
 - Most rape crisis centers are heavily focused on the advocates' roles in terms of supporting the survivor and dealing with the police or other hospital staff. They deal with what to anticipate with the rape kit, and how law enforcement and medicine deal with the actual assault. They don't address how one might run a training for employees on sexual harassment at work.
 - The Ya Basta Center, in terms of training people to be peer trainers, had done an overlap of both understanding the impact of trauma, but also actually delivering the training that is represented by the LOHP video and the curriculum that goes with that video.
- Dave Gurley
 - We need guidance and the expertise of the committee to help put together this appendix. Do we need a subcommittee to put together the appendix?
- Andrew Gross Gaitan
 - Subcommittee would be a good idea.
- Sulma Guzman
 - Motion: Create a subcommittee with the specific task of developing an appendix, listing a variety of documents.
 - Vote: Andrew Gross Gaitan made a motion. Veronica Lagunas seconded that motion.
 - Email or drop your name in the chat if you would like to be part of the subcommittee by early next week

VII. Public Comment

- None

VIII. Janitorial Advisory Committee's Review of the QOAF and Supporting Documents

- *The Information Practices Act of 1977 (IPA)* is a California privacy statute that provides limits on the collection, management, and dissemination of personal information by public agencies. The IPA does not apply to applications submitted by 501(c) nonprofit organizations that seek "qualified organization" status, because the applications are not "records" containing "personal information" as defined in the IPA.
- *The Public Records Act (PRA)* does not require redaction of employee names or other information from the applications or application materials, unless disclosure of such information otherwise constitutes an unwarranted invasion of personal privacy. Whether the

disclosure of any document constitutes an invasion of privacy will be made on a case-by-case basis.

- Names are okay as long as they are not tied to other identifying info
- DIR will do a thorough review of materials in the case the info may need redaction. May be privacy limitations to the information the Committee will receive.
- For the purposes of transparency, we've put a notification on the application that all of these materials will be public and will be put on the website in accordance with the Bagley-Keene Open Meeting Act

IX. Implementation Plan and Enforcement Deadlines (*continued*)

- No peer trainers or QOs in County
 - What training must they use?
 - Must employers use a Civil Rights Division (CRD) qualified trainer, conducting in-person training and using the LOHP materials?
- Questions/Comments
 - Andrew Gross Gaitan
 - If a QO is available, then the QO needs to deliver the training. If there is none, then some version of the training still needs to take place.
 - Cassie Peabody
 - Would the employer still pay the government trainer the same way as a QO?

X. Wrap Up

- Is the committee satisfied with this form? If yes, okay to post on 2/1/23?
- Appendix still needs to be attached to the form, and we have questions regarding the completeness of the appendix.
- Questions/Comments:
 - Andrew Gross Gaitan
 - Motion: Subcommittee to complete the work on the appendix, and then DIR could move forward with posting both the application and the appendix.
 - Tony Ruiz
 - I believe everyone is okay with the form. The only issue is the completeness of the appendix right now.
- Let us know by Monday (1/30/23) if you want to be on the subcommittee. We need to notice the meeting 10 days in advance.