

## CALIFORNIA APPRENTICESHIP COUNCIL

### NOTICE OF AVAILABILITY OF MODIFIED TEXT AND SUPPLEMENTAL STATEMENT OF REASONS

In October, 2008, the California Apprenticeship Council proposed a revision of California Code of Regulations, title 8, section 230.1, subsections (a) and (d). The Council submitted a rulemaking package, including the text of the regulation as revised, to the Office of Administrative Law ("OAL"). OAL determined that the rulemaking had defects of clarity and necessity.

The Council has now proposed modifications to the text of the regulation as submitted to OAL. This notice and the text of the regulation are available to the public between May 6 and May 21, 2009 at the Division of Apprenticeship Standards, Department of Industrial Relations, 455 Golden Gate Avenue, San Francisco, CA 94102..Any person who wishes to comment on the proposed modifications may do so by submitting written comments addressed to Glen Foreman at that address. The comments must be postmarked no earlier or later than the dates above and must be restricted to the proposed modifications. The Council is not obligated to respond to comments received in response to this notice on other aspects of the proposed regulation.

The text of the regulation below shows the regulation in its current form, the revisions in the version submitted to OAL and the modifications that are now proposed. The revisions in the version of the regulation submitted to OAL are shown as follows:

- a. New text is in single underline;
- b. Deleted text is in single strikeout.

The modifications subject to this notice are shown as follows:

- a. New text is in double underline;
- b. Deleted text is in double strikeout.

### SUPPLEMENTAL STATEMENT OF REASONS

1. Necessity of changes contained in the version of the regulation submitted to OAL:
  - a. The regulation has been changed to require a contractor to give 72 hours, and not 48 hours notice before the date on which apprentices are required. The change is intended to give apprenticeship committees more time in which to respond to requests and to conform the contractor's time for notice with 72 hours period in which committees must respond to a request.
  - b. The regulation has been changed to require a contractor to attempt to obtain apprentices from all the apprenticeship committees in the applicable trade or craft in the geographic area of the public works. By adopting the change, the Council strikes a balance between the need to allow a contractor to plan the project efficiently and the need to promote the hiring of apprentices on public works.
2. Necessity of modifications to the version of the regulation submitted to OAL:
  - a. Subsection (a) of the regulation will provide that a contractor is not excused from compliance with Labor Code section 1777.5 unless the contractor has been unable to obtain sufficient apprentices from apprenticeship committees in the geographic area of the of the site of the public

work in the applicable craft or trade. The version of the regulation submitted to OAL required a contractor to request dispatches "[i]n turn" from all such committees. The words "[i]n turn" have been deleted, and the regulation now would require a contractor to request dispatches from all such committees "either consecutively or simultaneously." The Council recognizes that requiring a contractor to contact committees sequentially might cause an unreasonable delay in the contractor's performance of the public works, particularly because a committee has 72 hours to respond to the request. The modification is intended to allow a contractor to determine quickly how many apprentices will be dispatched. By adopting the modification, the Council strikes a balance between the need to allow a contractor to plan the project efficiently and the need to promote the hiring of apprentices on public works.

b. Subsection (a) also has been modified to provide that all dispatch requests must be "in writing, sent by first class mail, facsimile or email." The Council believes that dispatch requests should be documented to allow verification of a contractor's compliance with the regulation and to determine whether committees are able to satisfy the demand for apprentices. The Council believes that the requirement will not pose an additional burden on contractors because it is currently the common practice to submit requests in writing. The Council allows three different methods of submitting requests to allow maximum flexibility and ease of compliance.

c. The version of subsection (a) submitted to OAL referred to situations in which no committee agreed to dispatch "in the future." The Council modified this language to "during the period of the public works project." The purpose of the modification is to clarify the period in which a refusal to dispatch is relevant to the contractor's obligation to hire apprentices. The Council intends that a contractor who is unable to obtain the dispatch of the required number of apprentices after making requests in compliance with this regulation is excused from compliance with Labor Code section 1777.5 during the period of the public works contract.

d. The Council modified the text in subsection (a) by making several punctuation and other non-substantive changes. In particular, the words "apprenticeship committee" were decapitalized and a redundant citation to Labor Code section 1777.5 was removed. The words "one to five" were hyphenated to conform to proper grammar. These modifications were made to improve the readability of the regulation and are not intended to change the meaning of the regulation.

e. The Council also modified the regulation by making four corrections to subsection (a) of the regulation. The words "job site" were deleted as redundant. The words "one of" were deleted to conform to the requirement that a contract make requests to all applicable committees in the geographic area. The word "actual" was changed to "written" to conform to the requirement that all requests be in writing. The word "individually" was changed to "consecutively" to be consistent with the word "simultaneously" in the same sentence.

f. Subsection (d) was modified to clarify that the regulation does not apply to public works that were bid prior to the effective date of the regulation. The purpose of the modification is to avoid the possible unfairness of applying the new regulation to contractors who submitted bids in reliance on the provisions of the previous version of the regulation. The modification recognizes that the effective date of the regulation cannot be determined at this time. For that reason, the modification contemplates that OAL will insert the effective date into the text of the regulation when that date can be determined. This procedure is accepted practice in California rulemaking.

## TEXT OF PROPOSED REGULATION 230.1

### . Employment of Apprentices on Public Works.

(a) Contractors, as defined in Section 228 to include general, prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required one~~4~~ hour of work performed by an apprentice for every five hours of labor performed by a journeyman, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 or this subchapter. Unless an exemption has been granted, the contractor shall employ apprentices for the number of hours computed above before the end of the contract. Contractors who are not already employing sufficient registered apprentices (as defined by Labor Code Section 3077) to comply with the one-to-five job site ratio required by Labor Code Section 1777.5 approved to train by an applicable joint apprenticeship committee or unilateral committee must request the dispatch of required apprentices from ~~one of the applicable Apprenticeship Committees~~ providing training in the applicable craft or trade and whose geographic area of operation includes the site of the public work by giving the committee actual written notice of at least 72~~48~~ hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. If the Apprenticeship Committee from which apprentice dispatch(es) are requested does not dispatch apprentices as requested, the contractor must request apprentice dispatch(es) from another committee providing training in the applicable craft or trade in the geographic area of the site of the public work, and must request apprentice dispatch(es) from each such committee, ~~in~~ ~~turn~~ either consecutively or simultaneously, until the contractor has requested apprentice dispatches from each such committee in the geographic area. All requests for dispatch of apprentices shall be in writing, sent by first class mail, facsimile or email. However If a non-signatory contractor declines to abide by and comply with the terms of a local committee's standards, the Apprenticeship Committee shall not be required to dispatch apprentices to such contractor. Conversely, if in response to a written request ~~noan~~ noan Apprenticeship Committee ~~does not~~ dispatches, or agrees to dispatch in the future during the period of the public works project any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices for the remainder of the project, provided that the contractor made the request in enough time to meet the above-stated ratio. If an Apprenticeship Committee dispatches fewer apprentices than the contractor requested, the contractor shall be considered in compliance if the contractor employs those apprentices who are dispatched, provided that, where there is more than one Apprenticeship Committee able and willing to unconditionally dispatch apprentices, ~~the~~ the contractor ~~who is not a participant in an apprenticeship program~~ has requested dispatch from ~~all~~ at least two committees providing training in the applicable craft or trade whose geographic area of operation include the site of the public work. Nothing in this section shall affect the right of a Contractor who participates in and employs registered apprentices from programs approved under Labor Code Section 3075 outside the geographic area of the public work from employing said apprentice(s) on the site of the public work in order to meet the ratio requirement of Labor Code Section 1777.5.

(b) Apprentices employed on public works shall be paid the applicable apprentice prevailing per diem wage rate, available from DAS, and derived from the Director's survey of wages paid on public works in the geographic area of the craft or trade. DAS shall refer complaints alleging any contractor's failure to pay the proper apprentice prevailing wage rate on a public works project to the Division of Labor Standards Enforcement for investigation and appropriate action.

(c) Apprentices employed on public works can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Where an employer employs apprentices under the rules and regulations of the California Apprenticeship Council, as set forth in Labor Code Section 1777.5(c)(2), apprentices employed on public works must at all times work with or under the direct supervision of journeyman/men. The on-the-job training shall be in accordance with the apprenticeship standards and apprenticeship agreement under which the apprentice is training, provided that a contractor shall not be subject to any financial or administrative obligations to a trust fund or employee benefit plan unless the contractor has so agreed.

~~(d) Contractors who have bid or have been awarded public works projects prior to January 1, 20090 and contractors who have bid prior to January 1, 20090 and have been awarded public works projects after January 1, 20090 shall comply with the provisions of Labor Code Section 1777.5 in effect prior to January 1, 20090, as implemented by California Apprenticeship Council regulations in effect as of February 16, 2002 prior to January 1, 2000. The provisions of this regulation shall not apply to contractors on public works projects that were bid prior to [the effective date of this regulation; to be filled in by OAL]. Such contractors shall comply with the version of this regulation that was in effect prior to [the effective date of this regulation; to be filled in by OAL].~~

Note: Authority cited: Section 1777.7, Labor Code. Reference: Section 1777.5, Labor Code.

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