

CALIFORNIA APPRENTICESHIP COUNCIL
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STANDARDS, RULES, REGULATIONS & OPERATING PROCEDURES COMMITTEE

Minutes

Wednesday, April 7, 2021

9:00 a.m.

Hosted Via Teleconference

I. Call to Order/Roll Call

Meeting called to order by Commissioner Louis Ontiveros at 9:02 a.m.

Roll Call of Commissioners was taken and a quorum was made.

II. Review/Approve Previous Minutes.

A motion and a second were made to approve the minutes of March 3, 2021 meeting. All were in favor. The motion carried.

III. Old Business

It was stated that no comments were received regarding AB2358. Commissioner Buckhorn stated that the intent was to take the first four areas listed below that were open for discussion and try to come to some sort of understanding or agreement on how we might move forward.

Contractor Annual Notice Requirements: A.B. 2358 requires that “annual notice” be given to any contractor that employs apprentices regarding their obligations under A.B. 2358. What is meant by a contractor that employs apprentices? For example, if an apprenticeship program dispatched once to a contractor three years

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ago, must the program give the contractor annual notice, even if the contractor no longer employs apprentices?

In addition, what does “annual” mean in terms of the time when the notice must be sent out? If a program dispatches apprentices to a new contractor, 365 days later is it time for the next anti-discrimination notice? A regulation could clarify. Also, the content of a “model” notice could be helpful. (§ 3079.3(c) (2) (D)).

- AB2358 Contractor Annual Notice Requirements

He stated that the first item we should start-off with and make decisions on is AB2358 Contractor Annual Notice Requirements. He stated that there was several questions asked one of which was what a contractor that employs apprentices means.

Suggested including all contractors that have employed a apprentices within the last 6 yrs. Most apprenticeship program last for 3-4 years. He suggested that 6 years be the minimum amount of time that contracts are required to be noticed.

The next question is what does annual mean? Suggested picking a date or one month during the year that this notice needs to be sent out. Suggested going by calendar year. Suggested that if a new contractor asks for an apprentice for the first time a notice should go out at that time and be included in the process of receiving a new apprentice.

I think we agreed that we are going to go with an annual calendar that these notices need to be sent out during the month of January. We agreed that we would work on a model notice that programs can use it and adapt it to their needs as a contractor. I we need to tighten up our definition of which contractors should be noticed. We discussed a 6-year look back, which is based upon the fact that if you receive a first year apprentice and you take him all the way through to graduation it could be 5 or 6 years. But I'm sure there is that circumstance were an out of area contractor or

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out of state contractor comes in to California they are there for the time that a project is underway and then they leave and the question is. Is there any reason to notice those contractors?

A motion and a second were made to work on a model notice and take the suggestions that were made today and suggestions received by close of business Monday regarding contractor notification and make them available for public review. All were in favor. The motion carried.

Please submit comments to CACSuggest@dir.ca.gov.

Eileen a member of the apprenticeship community offered to give her model notice to the commissioners to review and use as a template.

- CalPlan amendment adopting Federal Regulations for Equal Opportunity in Apprenticeship with the inclusion / addition of the more specific categories protected under the California Fair Employment and Housing Act.

In the definition section, that is an area where you know the change to include the more broad categories protected in The Fair Employment and Housing Act (FEHA) that is one section and then further down in section 5, section 6, section 7 and section 8. So actually in the agenda item you have Cal plan amendment adopting federal regulations for equal opportunity with inclusion/addition of the more specific categories and the 3rd bullet point the affirmative action plans those are somewhat related. Because in the affirmative action plan and what's required in then affirmative action plan is the establishment of utilization goals for race, sex and ethnicity and the utilization analysis's for race, sex and ethnicity. The question then becomes do you want just a utilization analysis for only race, sex and ethnicity or the broader categories protected by The Fair Employment and Housing Act (FEHA).

Looking at the document under section 6 you will see utilization analysis's for race, sex and ethnicity. Do you wanted to limited to just those categories or you want it expanded beyond that?

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Comments made from the public.

Commissioner Buckhorn asked if the statute 2358 already expand to cover the extra FEHA protection categories. Ken Lau stated yes it does.

Suggested treating the CalPlan differently than the 2358.

- AB2358 / CalPlan (29CFR30.3) Outreach Recruitment, Orientation and Periodic information sessions, Enforcement Actions

The following are issues that are derived from the amendments to the federal regulations.

- *Orientation & Periodic Information Sessions:* A.B. 2358 requires that anti-discrimination information be conveyed at “orientation” and “periodic” information sessions, but does not specify when the “orientation” must occur or what frequency is considered to be “periodic.” Clarifying guidance would be helpful. (§ 3079.3(c) (2) (C)).

A question if 2358 is just for the building and construction trades or does this include firefighters. After some discussion, it was confirmed that firefighters were not included.

Comments were taken from the public.

Discussed the importance of a timeline for programs.

Will there be a distinction between orientation and training? If it is strictly orientation that should be done as soon as possible since most program policies must be explained at the time they register.

We want some type of standardization. Suggested 30days.

A motion and a second were made to adopt the sample language for the orientation periodic information sessions as presented in the summary presented by Legal Ken Lau. All were in favor. The motion carried.

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- CalPlan (29CFR30.4) Affirmative Action Plans.

Outreach, recruitment efforts and enforcement actions were discussed.

Questions and comments were taken from the apprenticeship community.

Discussed manual notifications.

Ken Lau stated that this example is derived from the amended federal regulations.

The legislature is considering AB643, which requires public schools to send notice to programs regarding any planned college or career fairs. Asked if that is something that the committee would like to incorporate in the outreach and recruitment requirement if it passes.

Suggested adding both state and federally funded to this subsection A. Extend instead of extent. So minor changes to the verbiage.

Comments from the public.

Meg Vasey discussed clarification regarding the system of providing notice and what is the uniformity of receiving notice. Is the notice provided by mail and website posting? Meg Vasey suggested clarifying. The Apprenticeship community discussed the information that was included in section (c).

Made changes for this section to be updated to say:

(c) Provide specific recruitment sources advance notice, preferably 30 days, of apprenticeship openings so that the recruitment sources can notify and refer candidates. Programs that are open year-round shall

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have a bi-annual notification requirement. Such notification must also include documentation of the program's equal opportunity pledge specified in subdivision (d) of Labor Code section 3073.9.

A motion and a second were made to adopt the example language for 29 cfr 30 for the outreach and recruitment with the suggested amendments. All were in favor. The motion carried.

Questions and comments for the public regarding Enforcement Actions.
A question of who has standing to start a complaint.

Interested person is very vague and broad for someone that might file a complaint. Adversely effected could be too narrow.

The term interested person is somewhat vague but it tracks the existing regulation at 8 CCR201 which provides that any interested person may file a complaint against an apprenticeship program.

Additional comments were received from the public stating applicants are included in 2358 and 29CFR30 so there is an argument for a broad pool.

- *Enforcement Actions – What Constitutes “Failure?”*: Section 3079.3(i) states: “**Failure** to comply with the requirements of this section *may* be grounds for an audit.” What counts as a failure? A mere allegation? Does the failure have to be legally and/or factually established through a complaint process? May random audits (absence of any alleged failure) be conducted for A.B. 2358 violations? Clarifying guidance could be helpful.
- *Commissioner Jack Buckhorn was appointed as the chair for the remainder of the meeting.*

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Commissioner Buckhorn stated expanding on the definition on part B to keep it broad enough to still allow anyone with allegation to file a complaint even if it is not an apprentice or an applicant.

Discussed possible language change in the definition in the scope of the audit. Ken Lau agreed to work with DAS staff to have this language change prepared.

No additional comments from the public on section C. Draft and Review at next subcommittee meeting.

It was discussed that that the statute of limitations timeframe should be up to 180 days.

- Rulemaking request 230.1 Request for Apprentices

Lots of discussion and comments from the public on this issue.

Proposed changes for 230.1.

IV. New Business

None

V. Adjournment

The committee members agreed that the next meeting is Wednesday May 5, 2021.

Commissioner Buckhorn adjourned the meeting at 11:57 a.m.