

DEPARTMENT OF INDUSTRIAL RELATIONS  
**DIVISION OF APPRENTICESHIP STANDARDS**  
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## STANDARDS, RULES, REGULATIONS & OPERATING PROCEDURES COMMITTEE

### Minutes

Wednesday, July 28, 2021

Hosted Via Teleconference

### Wednesday, July 28, 2021

1:05 p.m. Commissioner Ontiveros was not able to attend Commissioner Buckhorn called the meeting to order.

#### **I. CONVENE QUARTERLY CAC MEETING**

##### A. Roll Call

Frank Quintero, Derrick Kualapai, Larry Hopkins, Yvonne de la Pena, Jack Buckhorn, Sheri Learmonth, Jason Rafter and DAS Chief Eric Rood

Absent: Louis Ontiveros, Chip Martin, Paul Von Berg, Richard Harris and Christopher Christophersen Sr.

#### **II. APPROVAL OF MINUTES**

The minutes of July 7, 2021 meeting were approved. All were in favor. The motion carried.

#### **III. OLD BUSINESS**

- Review of CalPlan in view of AB 2358 proposed regulations.

Commissioner Buckhorn stated that we have finished our body of work on AB238 and wanted to look at the rule package in light of the CalPlan to see if there was anything that was missing from the package.

Commissioner Buckhorn stated that he was looking for help from the other commissioners on how we want to evaluate the draft rule package of we've been working on and then compare that to the CalPlan.

Questions and comments were received from the Apprenticeship community.

Commissioners agreed that legal counsel and review on this would be beneficial.

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It was stated that these are a complicated set of regulations that we are trying to address with this rule package.

A possible idea is that we don't need the CalPlan regulations any more for many reasons.

A question from the commissioners of how we would instruct legal counsel to really go in depth with the review of this item. And how the rule package that we've been working on looks in comparison to the CalPlan and if there any holes that we can close before we submit this further in the process.

It was suggested that the state attorney general office represents the CAC. So it was recommended that it go through their office. DIR legal team and Ken Lau has provided charts that can be used but I would recommend that in the CAC would then utilize the Attorney General's office to do the analysis between the CalPlan and what we come up with. Over the last four meetings we have gone over this information section by section.

After lots of discussion it was decided that based off of prior rulemaking packages in the past this is following best practices.

Glen stated that the CalPlan Summary is posted on the CAC website currently for review by the public.

Commissioner Buckhorn proposed that everyone reviews the CalPlan Summary and we will have further discussion regarding this in compared to our of AB 2358 proposed rule package at our meeting scheduled September 2021.

Question and statements from the public were received.

It was stated and questioned that AB 2358 is a standalone provision about EEO standards in that are in state statute now. It encompasses a small part of the basic principles that are in the current version of the federal regulation 29 CFR 30, so I don't see any way that there can be anything in the CalPlan that would supersede the AB 2358 for two reasons: first of all it's in state statute. Secondly it is current and the CalPlan is moribund if not completely dead. Also because it's very old it refers to standards that were applicable in 1987.

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I would not like to link the adoption of an AB 2358 rules and regulations that have been worked on so assiduously and was so much work for this committee and delay it until we look at this other question about the CalPlan because I don't think it's relevant.

The second thing that was asked more basic issue is do we still need the CalPlan at all, in any form? The reason for asking this question is that in 1987 we were not dual registered. I believe we were still part of the federal but we were under federal oversight so it was our duty as a under federal oversight to implement 29 CFR 29 and 29 CFR 30 as they existed at that time. So at this time I don't know if we have a continuing duty to have that guidance for our programs on an updated bases in our regulations. This should be a legal question to be addressed.

It was a suggested that the commissioners receive legal guidance and if there is no requirement that we have something similar to a CalPlan in our statues or rules and regulations. Is there any utility for our programs to understand what their obligations are under 29 CFR 29 and 29 CFR 30 because most of our programs if not all of them are dual registered.

A motion was made to ask the state attorney general's office to review the CalPlan to see if we could include, repeal or resend legally. This motion was seconded and approved.

- Comments on Economic Impact of AB 2358 proposed regulations

Eric Rood shared the ECONOMIC AND FISCAL IMPACT STATEMENT document with the apprenticeship community:

<https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std399.pdf>

Eric stated that he felt it would be a good idea for us to get it on the record as far as potential costs implementing AB 2358. Will help us prepare the documents eventually to go to Office of Administrative Law.

This form was reviewed by the apprenticeship community.

It seems to me that all you're doing is implementing a set of existing requirements for the statute and the regulation itself may not add any cost at all. So it might be that that the correct answer to the question of how much is this going to cost or how much this regulation is going to cost is zero.

As soon as you put regulations in, the statues automatically included in and has to be put into the economic impact.

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Question was asked if Glen had the internal resources to do this analysis and come back to this committee with some recommendations for fiscal impact.

The question was asked. How much is it going to cost you as a program to comply with the requirements, notices, training, etc.?

We need a few programs to go back and do an analysis and give us a figure so that we can get an average in project for all programs the cost.

It was discussed if we do additions like for instance the disabilities section of CalPlan then that reasonable accommodation is a value. Then the question is what accommodation are we talking about and what number. There are many variables on this item.

Jack Buckhorn suggested that we start with some of the known factors like the notices. The number of apprentices that you have to put through a training program, the cost of a trainer. Etc.

Commissioner Larry Hopkins stated that he would attempt to come up with a Analysis/projection for his program.

No additional comments from the public regarding this issue.

#### **IV. New Business**

Meg Vasey wanted to make the commissioners aware of the report that the Labor commissioner's office published on I believe June 28 which is the summary of the required legislative report senate bill 530. Which is a couple years of old now. It was a requirement that DIR put together an advisory committee and issue report on best practices for tackling discrimination and harassment in the construction industry from the point of view of training practices.

Glen shared a copy of the entire report which is about 21 pages as well as a cut and pasted version of the first page which is the executive summary with the apprenticeship community.

Meg stated that things that we are already aware of, but a couple things that could impact our industry in future in terms of how we look at a harassment and discrimination prevention training in the construction industry at large. This is not apprenticeship specific. There were some suggestions that reporting an investigation mechanisms be included in the best practices, that there were

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some specifics regarding disciplinary policies. That ask that employers interpret zero based policies in light of a response for every complaint but not necessarily a firing for every offender but a progressive discipline model.

Make stated that she would like to call the committees attention to the recommendation for legislation which were adopted in the report. Some of which were that compliance with the training procedures be in some way included as a condition of a contractor's license. Another was the condition of the ability to bid on public works jobs.

These are all recommendations but I think they are all the ones that program should take note of and follow as we move forward.

Discussion from the apprenticeship community regarding this item.

The link was provided by Ken Lau

<https://www.dir.ca.gov/DLSE/LWDA-Approved-SAR5564-SB-530.pdf>

Question regarding feedback from the Office of Administrative law on the public works amendments. It was stated that we have not received a response and they have until August 6<sup>th</sup> to respond.

## V. ADJOURNMENT

Adjournment at 2:05 p.m.