

Sample Recordkeeping Language

Labor Code section 3073.9 Recordkeeping Requirements

(a) General obligation. Each ~~sponsor~~ program in the building and construction trades must collect such data and maintain such records as ~~the Registration Agency~~ **DAS or the Administrator** finds necessary to determine whether the ~~sponsor~~ program has complied or is complying with the requirements of ~~this part~~ **Labor Code section 3073.9 and its implementing regulations**. Such records must include, but are not limited to records relating to:

(1) Selection for apprenticeship, including applications, tests and test results, interview notes, bases for selection or rejection, and any other records required to be maintained **under relevant law** ~~under UGESP [Uniform Guidelines for Employee Selection Procedures]~~;

~~(2) The invitation to self-identify as an individual with a disability; [may not be applicable]~~

(3) Information relative to the operation of the apprenticeship program, including but not limited to job assignments in all components of the occupation as required under § ~~29.5(b)(3) of this title~~ **Section 212(a)(1)**, promotion, demotion, transfer, layoff, termination, rates of pay, other forms of compensation, conditions of work, hours of work, hours of training provided, and any other personnel records relevant to ~~EEO~~ complaints filed with ~~the Registration Agency~~ **the Administrator** under § ~~30.14~~ **Section 201.1** or with other enforcement agencies;

(4) Compliance with the requirements of **Labor Code section 3073.9** § ~~30.3~~ **[AB 2358 takes much of its language from 30.3]**;

(5) Requests for reasonable accommodation; and

(6) Any other records pertinent to a determination of compliance with **Labor Code section 3073.9 and its implementing regulations** ~~these regulations~~, as may be required by **DAS or the Administrator** ~~the Registration Agency~~.

(b) ~~Sponsor~~ **Program** identification of record. For any record the sponsor maintains pursuant to this part **Labor Code section 3073.9 and its implementing regulations**, the ~~sponsor~~ **program** must be able to identify the race, sex, ethnicity (Hispanic or Latino/non-Hispanic or Latino), and when known, disability status of each apprentice, and where possible, the race, sex, ethnicity, and disability status of each applicant to apprenticeship and supply this information upon request to **DAS or the Administrator**. ~~the Registration Agency~~.

~~(c) Affirmative action programs. Each sponsor required under § 30.4 to develop and maintain an affirmative action program must retain both the written affirmative action~~

~~plan and documentation of its component elements set forth in §§ 30.5, 30.6, 30.7, 30.8, 30.9, and 30.11.~~

(d) Maintenance of records. The records required by ~~this part~~ **Labor Code section 3073.9 and its implementing regulations** and any other information relevant to compliance with ~~these regulations~~ **this section** must be maintained for 5 years from the date of the making of the record or the personnel action involved, whichever occurs later, and must be made available upon request to ~~the Registration Agency~~ **DAS or the Administrator** or other authorized representative in such form as ~~the Registration Agency~~ **DAS or the Administrator** may determine is necessary to enable **DAS or the Administrator** to ascertain whether the ~~sponsor~~ **program** has complied or is complying with ~~this part~~ **Labor Code section 3073.9 and its implementing regulations**. Failure to preserve complete and accurate records as required by paragraphs (a), (b), and (c) **subdivisions (a) and (b)** of this section constitutes noncompliance with ~~this part~~ **Labor Code section 3073.9 and its implementing regulations**.

(e) Confidentiality and use of medical information.

(1) Any information obtained pursuant to ~~this part~~ **Labor Code section 3073.9 and its implementing regulations** regarding the medical condition or history of an applicant or apprentice must be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or apprentice and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing ~~this part~~ **Labor Code section 3073.9 and its implementing regulations**, the laws administered by OFCCP, or the ADA **Fair Employment and Housing Act**, must be provided relevant information on request.

(2) Information obtained under ~~this part~~ **Labor Code section 3073.9 and its implementing regulations** regarding the medical condition or history of any applicant or apprentice may not be used for any purpose inconsistent with ~~this part~~ **Labor Code section 3073.9**.

(f) Access to records. Each ~~sponsor~~ **program** must permit access during normal business hours to its places of business for the purpose of conducting on-site ~~EEO compliance reviews~~ **evaluations under Labor Code section 3073.1** and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material ~~the Registration Agency~~ **DAS or the Administrator** deems relevant to the matter under investigation and pertinent to compliance with ~~this part~~ **Labor Code section 3073.9 and its implementing regulations**. The ~~sponsor~~ **program** must also provide ~~the Registration Agency~~ **DAS or**

the Administrator access to these materials, including electronic records, off-site for purposes of conducting ~~EEO compliance reviews~~ **evaluations under Labor Code section 3073.1** and complaint investigations. Upon request, the ~~sponsor~~ **program** must provide the ~~Registration Agency~~ **DAS or the Administrator** information about all format(s), including specific electronic formats, in which its records and other information are available. Information obtained in this manner will be used only in connection with the administration of **Labor Code section 3073.9 and its implementing regulations** or other applicable ~~EEO~~ **equal employment opportunity** laws.

Recordkeeping Regulation from 29 CFR Part 30

§ 30.12 Recordkeeping.

(a) General obligation. Each program in the building and construction trades must collect such data and maintain such records as DAS or the Administrator finds necessary to determine whether the program has complied or is complying with the requirements of Labor Code section 3073.9 and its implementing regulations. Such records must include, but are not limited to records relating to:

(1) Selection for apprenticeship, including applications, tests and test results, interview notes, bases for selection or rejection, and any other records required to be maintained under relevant law;

(2) Information relative to the operation of the apprenticeship program, including but not limited to job assignments in all components of the occupation as required under Section 212(a)(1), promotion, demotion, transfer, layoff, termination, rates of pay, other forms of compensation, conditions of work, hours of work, hours of training provided, and any other personnel records relevant to complaints filed with the Administrator under Section 201.1 or with other enforcement agencies;

(3) Compliance with the requirements of Labor Code section 3073.9;

(4) Requests for reasonable accommodation; and

(5) Any other records pertinent to a determination of compliance with Labor Code section 3073.9 and its implementing regulation, as may be required by DAS or the Administrator.

(b) Program identification of record. For any record the sponsor maintains pursuant to Labor Code section 3073.9 and its implementing regulations, the program must be able to identify the race, sex, ethnicity (Hispanic or Latino/non-Hispanic or Latino), and when known, disability status of each apprentice, and where possible, the race, sex, ethnicity, and disability status of each applicant to apprenticeship and supply this information upon request to DAS or the Administrator.

(d) Maintenance of records. The records required by Labor Code section 3073.9 and its implementing regulations and any other information relevant to compliance with this section must be maintained for 5 years from the date of the making of the record or the personnel action involved, whichever occurs later, and must be made available upon request to DAS or the Administrator or other authorized representative in such form as DAS or the Administrator may determine is necessary to enable DAS or the Administrator to ascertain whether the program has complied or is complying with Labor Code section 3073.9 and its implementing regulations. Failure to preserve complete and

accurate records as required by subdivisions (a) and (b) of this section constitutes noncompliance with Labor Code section 3073.9 and its implementing regulations.

(e) Confidentiality and use of medical information.

(1) Any information obtained pursuant to Labor Code section 3073.9 and its implementing regulations regarding the medical condition or history of an applicant or apprentice must be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or apprentice and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing Labor Code section 3073.9 and its implementing regulations, or the Fair Employment and Housing Act, must be provided relevant information on request.

(2) Information obtained under Labor Code section 3073.9 and its implementing regulations regarding the medical condition or history of any applicant or apprentice may not be used for any purpose inconsistent with Labor Code section 3073.9.

(f) Access to records. Each program must permit access during normal business hours to its places of business for the purpose of conducting on-site evaluations under Labor Code section 3073.1 and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material DAS or the Administrator deems relevant to the matter under investigation and pertinent to compliance with Labor Code section 3073.9 and its implementing regulations. The program must also provide DAS or the Administrator access to these materials, including electronic records, off-site for purposes of conducting evaluations under Labor Code section 3073.1 and complaint investigations. Upon request, the program must provide DAS or the Administrator information about all format(s), including specific electronic formats, in which its records and other information are available. Information obtained in this manner will be used only in connection with the administration of Labor Code section 3073.9 and its implementing regulations or other applicable equal employment opportunity laws.

Department of Fair and Employment and Housing Recordkeeping Regulation

2 CCR § 11013

§ 11013. Recordkeeping.

Employers and other covered entities are required to maintain certain relevant records of personnel actions. Each employer or other covered entity subject to this section shall retain at all times at each reporting unit, or at company or divisional headquarters, a copy of the most recent California Employer Information Report (CEIR) or appropriate substitute and applicant identification records for each such unit and shall make them available upon request to any officer, agent, or employee of the Council or Department.

(a) California Employer Information Report. All employers regularly employing one hundred or more employees, apprenticeship programs with five or more apprentices and at least one sponsoring employer with 25 or more employees and at least one sponsoring union, which operates a hiring hall or has 25 or more members, and labor organizations with 100 or more members shall prepare an annual CEIR in conformity with guidelines on reporting issued by the Department.

(1) Substituting Federal Reports. An employer or other covered entity may utilize an appropriate federal report in lieu of the CEIR. Appropriate federal reports include the EEOC's EEO-1, EEO-2, EEO-3, EEO-4, EEO-5, and EEO-6 reports and appropriate reports filed with the Office of Federal Contract Compliance Programs (OFCCP).

(2) Sample Forms and Guidelines. Appropriate copies of sample forms and applicable guidelines shall be available to any employer or other covered entity from the Department of Fair Employment and Housing.

(3) Special Reporting. If an employer or other covered entity is engaged in activities for which the standard reporting criteria are not appropriate, special reporting procedures may be required. In such case, the employer or other covered entity should so advise the Department and submit a specific proposal for an alternative reporting system prior to the date on which the report should be prepared. If it is claimed that the preparation of the report would create undue hardship, an employer may apply to the Department for an exemption from the requirements of this section.

(4) Remedy for Failure to Prepare or Make Reports Available. Upon application by the FEHC or DFEH for judicial relief, any employer failing or refusing to prepare or to make available reports as required under this section may be compelled to do so by a Superior Court of California.

(5) Penalties for False Statements. The willful making of false statements on a CEIR or other required record is a violation of California Government Code section 12976, and is punishable by fine or imprisonment as set forth therein.

(b) Applicant Identification Records. Unless otherwise prohibited by law and for recordkeeping purposes only, every employer or other covered entity shall maintain

data regarding the race, sex, and national origin of each applicant and for the job for which he or she applied. If such data is to be provided on an identification form, this form shall be separate or detachable from the application form itself. Employment decisions shall not be based on whether an applicant has provided this information, nor shall the applicant identification information be used for discriminatory purposes, except pursuant to a bona fide affirmative action or non-discrimination plan.

(1) For recordkeeping purposes only, "applicant" means any individual who files a formal application or, where an employer or other covered entity does not provide application forms, any individual who otherwise indicates to the employer or other covered entity a specific desire to be considered for employment. An individual who simply appears to make an informal inquiry or who files an unsolicited resume upon which no employment action is taken is not an applicant.

(2) An employer or other covered entity shall either retain the original documents used to identify applicants, or keep statistical summaries of the collected information.

(3) Applicant records shall be preserved for the time period set forth in subdivisions (c)(1) and (2) below.

(c) Preservation of Records. Any personnel or other employment records made or kept by any employer or other covered entity dealing with any employment practice and affecting any employment benefit of any applicant or employee (including all applications, personnel, membership or employment referral records or files) shall be preserved by the employer or other covered entity for a period of two years from the date of the making of the record or the date of the personnel action involved, whichever occurs later. However, the State Personnel Board shall maintain such records and files for a period of one year.

(1) California Employment Information Report. Every employer subject to subsection (a) above shall preserve for a period of two years from the date of preparation of the CEIR such records as were necessary for completion of the CEIR.

(2) Applicant Identification Records. Every employer subject to subsection (b) above shall preserve applicant identification information for a period of two years from the date it was received.

(3) Separate Records on Sex, Race, and National Origin. Records as to the sex, race, or national origin of any individual accepted for employment shall be kept separately from the employee's main personnel file or other records available to those responsible for personnel decisions. For example, such records could be kept as part of an automatic data processing system in the payroll department.

(4) After Filing of Complaint. Upon notice of or knowledge that a complaint has been filed against it under the Act, any respondent, including the State Personnel Board, shall maintain and preserve any and all relevant records and files until such complaint is fully and finally disposed of and all appeals from related proceedings have concluded.

(A) For purposes of this subsection, “related proceedings” shall include any action brought in Superior Court pursuant to section 12965 of the Government Code.

(B) The term “records and files relevant to the complaint” shall include, but is not limited to, personnel or employment records relating to the complaining party and to all other employees holding similar positions to that held or sought by the complainant at the facility or other relevant subdivision where the discriminatory practice allegedly occurred. The term also includes applications, forms or test papers completed by the complainant and by all other candidates for the same position at that facility or other relevant subdivision where the employment practice occurred. All relevant records made or kept pursuant to subsections (a) and (b) above shall also be preserved.

(C) The term “fully and finally disposed of and all appeals from related proceedings have concluded” refers to the expiration of the statutory period within which a complainant or respondent may bring an action in Superior Court, or an agreement has been reached by the parties whereby no further judicial review is available to any of the parties, or a final order has been entered by a body of judicial review for which the time for filing a notice of appeal has expired.

(d) Posting of Act. Every employer or other covered entity shall post in a conspicuous place or places on its premises a notice to be prepared and distributed by the Department, which sets forth excerpts of the Act and such relevant information the Department deems necessary to explain the Act. Such employers employing significant numbers, no less than 10% of their work force, of non-English-speaking persons (e.g., Chinese or Spanish speaking) at any facility or establishment must also post in the appropriate foreign language at each such facility or establishment. Such notices may be obtained from the Department.