

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

AGENDA

Wednesday, March 3, 2021

9:00 a.m.

Hosted Via Teleconference

I. Call to Order/Roll Call

Meeting called to order by Commissioner Jim Hussey 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 February 3, 2020 meeting. All were in favor. The motion carried.

III. Old Business

- Update / Status Rulemaking Packages

Commissioner Hussey asked for Chief Eric Rood to give updates on all rulemaking packages. Chief Rood stated that he believed that this will be the last report out on SB 56. He stated that this package was approved by the office of administrative law. It has been posted and it goes into effect April 1, 2021.

Chief Eric Rood also discussed the Public Works rulemaking package. He stated that there has been some significant updates on this. He stated the 399 financial impact form. The Labor Secretary Julie Su delegated authority for this rulemaking package back to the CAC. As a result, that opened the doors to file the 399 with the Department of Finance. Commissioner Jim Hussey

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and Jack Buckhorn were able to sign off on the 399. We answered all questions received from the Department of Finance regarding the 399.

He stated that the deadline to file with Office of Administrative Law was March 1, 2021. The package was filed on Monday February 22, 2021. We are currently waiting for an attorney to be assigned to us from the Office of Administrative Law. At this time, there are no other updates.

- Questions and comments were than received from the public.
- It was stated that an attorney is typically assigned within 3 weeks on filing.

IV. Review and Suggested Changes for Assembly Bill 2358

Commissioner Hussey stated that there was some documents that have been prepared and have been posted on the CAC website. It is a summary and review for both the possible rulemaking on AB 2358 as well as the update for CalPlan.

Commissioner Hussey stated that most of this was put together by Ken Lau and his team. He stated that this is a great piece of work and he wanted to compliment Ken and his team for putting this together because it's illuminating and enlightening and really helps bring some context to the work that's in front of the committee. I am hoping the Ken is here to take us through this material. But before we do so having read all this I think that the best way to go forward is to flip these two items on the agenda. He asked that we go through suggested changes to the section 215 CalPlan and then go through that material before we go through the material on AB2358. He stated that much of what's in 2358 is in the section 215 CalPlan update and there is some redundancy. He started we would be more efficient for us to go in this reverse order.

He asked for Ken to take us just on a quick walk through of the material he prepare on the suggested changes for the CalPlan.

Ken started this document was prepared back in November.

Commissioner Hussey stated that this document does a great job of laying out the areas that this committee needs to look at.

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Commissioner Hussey stated as you go through the document that Ken laid out each section, issues that are associated with each of those sections and even some suggestions that the committee might look at.

Commissioner Hussey stated that he believes there is more than 15 sections that came under your review with recommendations. There is a total of 25. Commissioner Hussey suggested that this committee in order to do their work rather than try and tackle the complete update to CalPlan and any possible rulemaking around AB2358. He is going to suggest that we use this summary as a guideline and then divide this into a manageable piece of work. We have already agreed we're going to meet on a monthly basis. Next month we will take items 1 through 5 and those will be the agenda items for next month's committee meeting and asked would we will process and take public comment on and if it takes us four meetings to get through these items then so be it. But then when we get to the end of four meetings we will have good work and good recommendations that we can bring forward to the full commission. With that kind of game plan in mind I'm hoping that if you if you can just get a walk us through your summary and folks can get a feel for these issues we can then discuss the importance of these issues and how many we want to try and tackle per meeting going forward. Commissioner Hussey said he was hoping that by taking us through this that we can get a bit of a preamble that we can use as a framework to get started on our work.

Ken started the first section of the existing CalPlan describes the scope of the CalPlan and in the updated federal regulations it has an equivalent scope. I think the issue here is if you look at the document itself it is that where as the federal language which protects against discrimination only on a limited number of bases compared to what our state law FEHA- Fair Employment and Housing Act acts against which is a lot broader. The council has to make the decision as to whether they want to track the the federal language which only protects on race, color, religion, etc or whether the council wants to adopt the more broader state law standard. Which includes things like marital status, gender identity, etc.

There are the federal regulations and there are the state regulations. The state regulations cover a broader section of the population. If we were going to adopt or proposed rulemaking around AB2358 We're almost back to Glen Forman's original recommendation that do it through an update of the CalPlan. It seems that the theme throughout this entire document is almost and in all cases is that we amend Cal plan and adopt a broader California

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language. By doing that we will then have covered almost everything that's in 2358 with the exception of a couple of specific prohibitions that are unique to 2358 that we could we could cover almost as an addition to CalPlan later on.

Ken stated that it's a very good observation that FEHA is a lot broader than the protection's afforded by the federal regulations but that's not always the case there are 1 or 2 instances where maybe the federal laws a little broader. I think that state law in general is just especially the state apprenticeship law is just a little different then the federal regulations and even some of the terms. Like as in section 2 from the definitions that are used. We have in the Shelley Maloney Apprentice Act a slightly different formulation of terms that the federal regulations also use and so the council has to think about whether they want some instances we to use the state law a formulation of the term because that is in statue. In other instances where we have existing regulations that define for example, what a program sponsor is or what a program is and that differs from what or how the federal regulations defines it. then you have to make a choice as to whether he want to adopt the federal formulation or stick with the existing state regulations definitions of those terms and you know in deciding whether you want to adopt the broader protections of a FEHA or the broader categories protected by FEHA. You also have to consider whether that would impose a bigger burden on apprenticeship programs and especially some of the smaller apprenticeship programs. Particularly in instances where your asking apprenticeship programs or your imposing certain requirements that the federal regulations require and then apply those requirements more broadly than even what the federal regulations require.

Commissioner Hussey suggested that we use this summary as a roadmap to go forward.

Commissioner Hussey started Ken's team did a great job of looking at CFR 30 1-19 and each one of those sections where it may be something as simple as expanding language to include the broader California language or it may be something quite specific with regards to specific actions over or requirements that might be imposed on our programs. Commissioner Hussey suggested rather than then go through this entire document.

He suggested opening this item for comments from our committee members and the public with regard to a using this as a roadmap to go forward

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because it seems to me that each one of these items CFR 30. 1 CFR 30.2 is going to is going to require some deliberation by the committee and input and comments from the public so that we can formulate any proposed regulations before they get to up to review by the full commission.

Questions and comments were than received from the public.

Commissioner Buckhorn stated that as far as the California fair employment and housing requirements. 2358 requires at all JATC's in the building trades adopt those broader standards regardless of size.

As I look at the summary of 2358 that's like the first thing that they mention. He stated that he thinks that would be important and that we should take some public comment on it. Commissioner Buckhorn stated that he didn't believe think that we have a lot of latitude there when it comes to adopting the broader California standard against discrimination. He stated that he does like the idea of using the proposed CalPlan amendments and just going through each section, having a discussion and taking public comment and see if we can agree on some of these proposed changes that we might adopt. Also he stated that he sees a couple areas that need further work. One is a proposed notice that we might be able to standardize for JATC's to send to employers. I think that would be a very good thing for us to work on. To actually have that notice that we could provide out to make that part of the requirements standardized and a little bit easier for all JATC's. I think we can move forward but a lot of good works been done.

Commissioner Kualipi was in concurrence with the commissioner Hussey recommendation to the utilize this as a guide moving forward through the process.

Eileen Goldsmith spoke on the Calplan review and the incorporation as 29 CFR part 30 I think his is a broader and more general review than what the the CAC may want to do around AB2358. Which is limited to building trades programs and the statute and has some very targeted language about things like training and policies that programs should have in place and implement. She started that both of these are important efforts for this committee and then the CAC but we would not want one to delay the other and this might be a lot to do all at once.

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Miss Goldsmith suggested input from stakeholders as we work through AB2358.

Commissioner Hussey asked how could we engage participation in these meetings.

Glen stated that we have created a special called meeting tab just for these meetings on the CAC website. He also stated that he has created an email address cacsuggest@dir.ca.gov. Comments and suggested revisions can be sent to the email address provided.

Attorney Ken Lau discussed the following issues:

The following is an issue specific to A.B. 2358/building trades that may need clarification, and are unique to A.B. 2358 (i.e. not modeled after the federal regulations).

- 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 ago, must the program give the contractor annual notice, even if the contractor no longer employs apprentices? Also, 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, 364 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)).

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

- Orientation & Periodic Information Sessions: A.B. 2358 requires that antidiscrimination 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)).

Example: (a) Each program must conduct orientation and periodic information sessions for apprentices, instructors, and employees of the

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apprenticeship program to inform and remind such individuals of the apprenticeship program's equal employment opportunity policy.

(b) For the purposes of this section, orientation for instructors and employees of the apprenticeship program must occur within the first two weeks of employment, and orientation for apprentices of the apprenticeship program must occur within five business days the apprentice is registered as an apprentice.

(c) For the purposes of this section, periodic information sessions must be conducted for apprentices, instructors, and employees of the apprenticeship program once each calendar year.

Commissioner Hussey suggested using the CalPlan as a roadmap but he suggested the best way to do this would be dividing up these items in chunks but maybe we would tackle at each meeting an item that's unique to A2358 and then a certain amount of items from the CalPlan. It was started that some of these are going to take a fair amount of deliberation, certainly enforcement actions. I would like to amend the recommendation rather than just following the sections in CalPlan with this focus on 2358 section by section that we would have to do a little bit of both at each meeting.

Commissioner Hussey stated that he would attempt to create a long-term agenda for the next three or four meetings. With the goal that in the next four meetings we can get through all this material.

Commissioner Hussey asked for comments from all participants.

No motion was needed to move forward with this framework.

A question was received from Brother Hameed from the National Black Contractors Association asking how do we enforce non-compliance for participation on excluded groups i.e. woman who are applying but not enrolled.

Commissioner Buckhorn started that is part of the internal complaint enforcement mechanism that we were just discussing. Which we need to you I do some work on. As Ken mention right now labor code 30 73.9 defines

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how we deal with complaints around apprentices on the typical issues that we seen and there is a possibility to expand that to include AB 2358 including an enforcement mechanism the chief would have to perform audits if so required. Which could lead ultimately to deregistration.

Attorney Lau stated that the statute provides for on three separate mechanisms to enforce the requirements of 2358. One of which is the deregistration. One could file a complaint and the administrator rule on that complain and provide remedies in that sort of procedure. Another is that the Chief could conduct what we now call evaluations, that used to be called audits and there if the program doesn't comply with this suggested recommendations within that evaluation then DAS could move towards the registration or if the violations are egregious enough. Then DAS has a third option to move directly to the deregistration procedure without going through an evaluation.

Meg Vasey wanted to note that the question is regarding applicants.

Question was asked if 2358 covered applicants. Ken Lau stated yes.

V. New Business

- A request for rulemaking around AB1870.

DAS Assistant Chief Glen Forman stated that this is actually an amendment to an original approval from the council. The original amendment was the strike out language that was provided in a handout (please see the attached) it has to do with the training payments of the training fund contributions. Currently the statute Labor Code 1777.5 (m)(2) has changed the way we did this. This was just the strikeout language it never made it to office of administrative law. Our attorneys suggested that we put the top strike out and inclusion language into this and this is just a pretty straight forward clean up. Glenn started that he believes we can put this in a rule 100. This document has been out in in available for comments.

Commissioner Hussey started this item was open for discussion. Commissioner Buckhorn and Hopkins both stated that they have read the document and approve to move forward with this item.

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Attorney Ken Lau stated that once the full council approves this slight modification of the language as Glenn has mentioned. We intend to move it via rule 100 which is a change without regulatory effect because it conforms the regulation with the statute and that hopefully is a much quicker process without the necessity of public hearings, public comments and 399's.

A motion and a second were made to make a recommendation to the full CAC that we adopt the proposed changes in Subchapter 1. Apprenticeship Article 10. Section 230.2 and submit it to OAL using rule 100. All were in favor. The motion carried.

- Requested Changes to 230.1

DAS Assistant Chief Glen Forman stated that we have two letters and an email on this subject and this was brought up at the last CAC which was forwarded to this committee because it has to deal with regulation changes first.

Excerpts from these items were posted online in a ADA format. These documents were discussing a have to do with the Worthington decision. We received two similar letters that are requesting changes to 230.1. It has to do with request for dispatch for apprentices and in both of the letter you will find basically they had the same requests.

Suggested changes to regulations would include:

- Request for dispatch must be unconditional.
- Request for dispatch must contain required information, including actual specific date, time and location for apprentice to report.
- Request for dispatch may be on the DAS Form 142 or equivalent, as long as the request contains the same information as the DAS Form 142.
- Apprentices may only be requested to report on a date and at a time when Journeymen in the same apprenticeable craft are employed on the project.

DAS Chief Eric Rood along with Bryan Berthiaume, Executive Director for Foundation For Fair Contracting gave some background on the Worthington case.

Discussed the DAS 140 and 142. The 142 form as a suggested document implies that it is a suggested form and that it is not mandatory.

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Discussed what language needs to be added to the 230.1 and what information needs to be required for dispatch of an apprentice.

There were questions and comments made from the apprenticeship community. Discussions regarding unconditional dispatch was discussed by the apprenticeship community. Additional clarification was requested regarding unconditional dispatch.

Discussed contractor services/ consultant companies and issues with dispatching of apprentices and there lack of knowledge about apprenticeship.

Commissioner Hussey stated typically, when we've done this in the past. When we did the form 140, we had members of the apprenticeship community that were asking for the changes submit recommended language. In the case of the 140 he stated that he recalls that we got red lines from the programs with the language that they wanted to see. Commissioner Hussey asked is that the way that we should go forward. He also suggested that we ask our own counsel to take a look at the request that have come in from the programs and a prepare some suggested language or edits so that we can have that to review at our next meeting.

DAS Chief Eric Rood asked Bryan Berthiaume if he would be willing to put something together for our next meeting. He stated that he would with permission from the Foundation for Fair Contracting.

Commissioners Hopkins stated for clarification we will review for possible changes and then language will be submitted for 2030.1 or the form itself.

A motion and a second were made to put on the next agenda to review or to receive language submitted for recommendations on the 2030.1 All were in favor. The motion carried.

Suggested that any programs out there would be able to submit recommendations to cacsuggest@dir.ca.gov .

VI. Adjournment

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The committee members agreed that the next meeting is Wednesday April 7, 2021.

Jim Hussey adjourned the meeting at 11:04 a.m.