

DEPARTMENT OF INDUSTRIAL RELATIONS

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AB 547 Advisory Committee
DRAFT – MINUTES OF MEETING
Friday, June 29, 2022

Via In-Person and Video/Audio Conference

In Attendance:**DIR:**

Deanna Ping, *DIR Chief Deputy Director*
Sulma Guzman, *Legislative and Regulatory Affairs, Deputy*
Kumani Armstrong, *Special Counsel (via Zoom)*
Zakiya Ali, *DLSE (via Zoom)*
Dave Gurley, *DLSE (via Zoom)*
Patricia Salazar, *DLSE (via Zoom)*
Lizbeth Woo, *DLSE*

Andrew Gross Gaitan, *SEIU United Service Workers West*
Sandra Henriquez, *VALOR*
David Hernandez, *Servicon Systems, Inc.*
Rachael Langston, *DFEH*
Veronica Lagunas, *Ya Basta*
Beth Malinowski, *SEIU California*
Cassie Peabody, *Maintenance Cooperation Trust Fund*
Luis Sandoval, *Building Skills Partnership*
Jessica Stender, *Equal Rights Advocates*
Alejandra Valles, *SEIU United Service Workers West*
Laura Zwick, *ABM Industries Inc. (via Zoom)*

Committee Members:

Yardena Aaron, *Maintenance Cooperation Trust Fund (via Zoom)*
Anabella Aguirre, *Ya Basta*
Chris Bouvier, *ABM Industries Inc. (via Zoom)*
Sandra Diaz, *SEIU United Service Workers West*
Alejandra Domenzain, *UC Berkeley - LOHP*
Dick Dotts, *DMS Facility Services*

Interpreters:

Ronaldo Jesus Obregon, *DIR Interpreter (via in-person)*
David Myers, *DIR Interpreter (via Zoom)*

I. Approval of Minutes

Motion: Approval of the minutes from the November 18, 2021 meeting

Vote: The committee members in attendance voted unanimously for approval of the minutes from the November 18, 2021 meeting.

II. Stay of Enforcement

- Propose 1 more 90-day extension to be followed by a vote after proposal is made by LCO
- Previous proposal:
 - Keep workers safe from the pandemic
 - Provide a substitute training to all workers in an effort to train workers on how to

prevent/report sexual assault

- DFEH training was a stop-gap training during the pandemic
- First proposal to stay AB 547 was in December 2020 – committee unanimously agreed to extend implementation/enforcement of AB 547 until January 2022 due to pandemic
- Second proposal was in September 2021 – committee unanimously agreed to extend implementation/enforcement of AB 547 until July 2022 due to the pandemic
- Third proposal today to extend implementation/enforcement of AB 547 until October 1, 2022
 - Need additional time to implement the qualified organization and peer training requirements, and to list those qualified organizations on the DIR website
 - Allows the committee to participate in this process as intended by AB 547
- Proposal to Extend In-Person Training with Online Training as Required under the FEHA
 - Proposal to extend stay of enforcement of the in-person training requirements to October 1, 2022
 - Suspend until October 1, 2022, enforcement of Labor Code section 1429.5, subsections (a), (c), (d), (e), and (k) and applicable DLSE regulations.
 - Covered employers to comply with Government Code section 12950.1 by providing DFEH online trainings (1 hour for non-supervisory , 2 hours for supervisors)
 - Allows the committed to provide feedback on the list of qualified organizations, and also provide valuable public feedback on the applicants
 - Labor Code section 1429.5:
 - Subsection (a): In-person sexual violence and harassment prevention training, qualifications for trainers for nonsupervisors
 - Subsection (c): List of qualified organizations to provide employers with qualified peer trainers for nonsupervisors
 - Subsection (d): LOHP training requirement
 - Subsection (e): Compliance certification requirements for use of qualified organizations
 - Subsection (k): Alternatives when no qualified peer trainers available
 - LCO posted guidance on the temporary substitution of the Section 12950.1 training requirements. Guidance will remain until October 1, 2022.
 - LCO to suspend until January 1, 2023, enforcement of the attestation requirement, but continue to have employers confirm that they provided sexual harassment and prevention training on the application; still CA law that employers train their workers in sexual harassment prevention
 - Reconvene the Advisory Committee during 2022 to continue development of the list of qualified organizations
- Questions/Comments
 - Chris Bouvier – Janitorial industry is spread out. People typically work in different locations. It would be critical once a qualified training organization is identified/selected for logistical preparation to be done before janitors could be trained. Unsure if the janitors will be trained in the building where they report to every night or at a single location where more training can be done at a single time. These types of logistical questions have not been worked out yet, not even for the thousands of union janitors. What about the janitors in other parts of the state where the union is not present? It may be Ya Basta, or some other alternative. We haven't even identified how to qualify these organizations. The residue from the pandemic is still present in the office market, which is where the bulk of the janitors work. SF currently has an occupancy rate of 30%

in their offices, while LA has about 40%. Many of these janitors will be subject to this training who are not in the buildings right now. We need a little more than the 3 months LCO is proposing. January 1, 2023 is preferable. This will give more time to get the qualifications out there, get the process started, and then work with these organizations in a way that is meaningful so the logistics of training can be plotted out.

- Anabella Aguirre – Ya Basta is ready for those trainings and classes, but we also want to wait until January 1, 2023. This will help by giving us more time to get more people in the buildings to train, and not just give a presentation with 30-minute videos, like what was done in the past. Co-workers do not understand the concepts. We will be the trainers to give these classes on sexual abuse and harassment in the workplace.
- Veronica Lagunas – We continued to see an abuse of power in the workplace during the pandemic. Our objective is to change the culture inside these buildings. We need everyone at their place of work to be able to have this communication with the majority of them.
- Alejandra Valles – The numbers of janitors in the janitorial industry are not where they used to be. Our local which represents the majority of the janitors in the State of CA is still at 50-55% of janitors back to work full-time. Many janitors took a cut in hours and there was a lot of shifting in the industry to ensure they had enough hours to keep healthcare during the pandemic. We may not be back to pre-pandemic numbers in janitors. Sexual harassment complaints increased. There was confusion from DFEH training. Some employers stated they will pay for the 2 hours before work, and some incorporated into the 8-hour workday. We support the 6-month extension. Culture aspect change is the most important to USWW. To launch this in-person training for the first time at the worksites, it is important to have as much of the permanent workforce as possible. Support the 6-month extension of January 1, 2023, which is just 3 more months that what the LCO is proposing.
- Sandra Diaz – As a part of this legislation, we have shift of culture and another element of collaboration embedded for this to be successful. Collaboration – qualified organizations and employers. Mechanisms (qualified organizations and enforcement) that must be in place with the State of CA in order for this to be effective.
- Sandra Henriquez – Support 6-month extension to January 1, 2023. Concerns about continuing the extension beyond that date. The bill was important and the motivation for this for this to be in-person is essential. This will be the last extension. Any time there is a natural disaster, issues surrounding violence and abuse go up. There is some time-sensitivity in breaking that isolation. Should we vote on the extension that this time be used to make sure the infrastructure is put in place so we could be ready to go in January 2023?
- Dave Gurley – There is a need to get to in-person training. LCO created this timeline to effectively implement the infrastructure to get the qualified organization list up by October 1, 2022. It appears that the committee is suggesting pushing everything out to January 1, 2023. There appears to be two options: (1) Extending everything to January 1, 2023 and amend all deadlines throughout the presentation, or (2) List up by October 1, 2022, and allow for a few months lag time before enforcement starts. Will need to work out specific dates. Stays were justified because of the pandemic. Now, people are slowly going back to work.
- Alejandra Valles – Agree with the October 1, 2022 date for the QO list, and the January 1, 2023 date for the implementation of the in-person trainings.
- Andrew Gross Gaitan – In regards to the attestation requirement, wouldn't it be 1 year out from when the in-person requirement starts?

- Response: Under 1429 (a)(10), there is a specific January 1, 2022 attestation requirement that indicates that you must confirm providing the in-person training. We've pushed that out 1 year to January 1, 2023. We can revisit to push out. This proposal anticipates to have the QO list up by October 1, 2022, and for the in-person training to begin January 1, 2023. That application would be changed to meet the the 1429(a)(10) requirement – employer to confirm using a peer training consistent with AB 547.
- Sandra Diaz – Posting the QO list by October 1, 2022 works for coordination, so the employers will be ready to implement by January 1, 2023. Would we have sufficient time in setting up effective partnerships on enforcement?
- Andrew Gross Gaitan – Need clarification regarding the attestation requirement. From the moment the employer has the obligation to start the in-person training, they have 1 year to demonstrate they have trained everyone for the first time by the end of that first year. It sounds like the attestation requirement is the commitment that the employers are going to provide the in-person trainings. What was the envisioned timeline for when the trainings are to be completed?
 - Response: Initially, that attestation requirement was put out 1 year to get everyone up and running. It sounds like the suggestion is that if we are going to start implementation on January 1, 2023 for the in-person trainings, we would extend that attestation requirement out 1 year to January 1, 2024. On the application, employers would be required to verify the use of the AB 547 trainings. Will discuss with internal team to develop what would make sense regarding that 1429(a)(10) attestation.
- David Hernandez – In lieu of the in-person, we have been doing the e-learning approach. (1) Is that being taken into account for calculating the bi-annual frequency for existing employees, or is everyone going to start from zero once we go to enforcement? (2) Once we understand the landscape of qualified organizations, it would help the employers understand reality of the logistics of becoming compliant.
- Dick Dotts – Whether the person was trained under DFEH or under the AB 547 peer training, we would have the clock each employee on a 2-year cycle, and schedule them for the training.
- Chris Bouvier – Agree with the QO list going up on October 1, 2022, obligation to implement on January 1, 2023, and obligation to attest by January 1, 2024. Are there any other organizations besides Ya Basta that have shown interest in becoming a QO?
 - Response: LCO is unaware how many applicants there may be.
- Andrew Gross Gaitan – Who is the target trainee list for January 1, 2023? Both Servicon and DMS have raised the question about people who already had the online training from DFEH. Strong recommendation is for everyone to start with a clean slate. When rolling out the peer training, it would be a fresh start for all employees.
- Jessica Stender – The specific nature of this type of training (in-person) is the only way for this training to be effectively conducted. Strongly believe that the in-person requirement should begin for everyone regardless if they previously did the online training.
- Cassie Peabody – Between now and October 1, 2022, do we have enough time and will we feel secure on who we are inviting to be part of the QO process?
- Deanna Ping – If the concern is the October 1, 2022 date, we can discuss. In terms of consensus on the extension on the stay of enforcement, the committee would need to provide a consensus today.
 - Response: Whether we want to start with a clean slate will be something we will

need to discuss internally and take it back to the group. However, we will need consensus today regarding the extension on the stay of enforcement.

- Alejandra Valles – Advocates felt very strongly that when we were able to relaunch, it would be with a clean slate because of the trauma and curriculum. October 1, 2022 is doable. This gives employers time to make arrangements and decide which QO they will select for the training.
- Alejandra Domenzain – If we did not have an extension because of COVID-19, the clean slate would apply to all employees. The concept is the current training is inadequate. We need to do better. We need to do different. There is no valid argument for not starting with a clean slate.
 - Response: We would need to coordinate with LCO regarding the clean slate.
- Summary of Proposal for Consensus
 - Stay/suspend of enforcement all of enforcement of AB 547 until October 1, 2022, but specifically posting the QO list. Enforcement – clarify with LC that there will be a grace period and implementation to start January 1, 2023.
- Questions/Comments
 - Andrew Gross Gaitan – would like to amend the motion to include the committee’s recommendation to start with a clean slate on January 1, 2023.
 - Sandra Diaz – LCO’s original proposal was to stay on the requirements until October 1, 2022, and at that point, the QO list would be posted. During the course of this discussion, there have been two concrete recommendations that LCO will have to take back to the LC – (1) there will be a grace period, and enforcement will begin January 1, 2023, and (2) clean slate to start the in-person training cycle. Would suggest comprehensive motion instead of fragmenting the decision.
 - Chris Bouvier – The only thing that is not encompassed in the original motion is the January 1, 2024 attestation.
 - There is the proposal that DIR/LCO put forward that we want to confirm today in terms of delayed implementation. The piece that DIR/LCO needs to huddle internally with respect to existing requirements, the clean slate, and the delay in attestation requirement.
 - Sandra Henriquez – There needs to be a clean slate starting January 1, 2023
 - Sandra Diaz – Understand that there needs to be a vote today to extend the stay of enforcement because the current stay will expire July 1, 2022. Not sure why the clean slate piece is excluded from that vote, where it has been the center of the conversation from the very first bill. There is history to this in-person mandate to be constantly defending it in every space.

Motion: Recommendation of the committee to extend the stay of enforcement to January 1, 2023, get the QO list up by October 1, 2022. Take back to the LC/DIR the recommendation of the clean slate (January 1, 2023) and attestation (January 1, 2024).

Vote: The committee members in attendance voted unanimously in support of this recommendation.

- Qualified Organization (QO) Process
 - Implementation Plan
 - LCO anticipates to finalize the application process after today’s meeting
 - Looking to the committee to assist DIR/LCO in compiling a list of supporting documents which will assist in finalizing the QOs that we could recommend to the director

- Review some tentative dates for this process:
 - Week of July 5, 2022 – Finalize application, or the Qualified Organization Assessment Form (QOAF)
 - Week of July 5, 2022 – QOAF uploaded to LCO website
 - August 5, 2022 – Deadline to apply (QOAF + supporting documents)
 - August 5, 2022 – September 5, 2022 – LCO review QOAFs
 - September 5, 2022 – LCO prepares list of applicants
 - September 6, 2022 – Send list to advisory committee; approx. 2 weeks to review the list of applicants
 - September 20, 2022 (proposed) – Schedule next meeting; during the meeting the committee would provide input in support of or opposition of any applicant(s)
 - September 21, 2022 – Finalized list to DIR
 - October 1, 2022 – QO List posted on LCO website
- Questions/Comments
 - Andrew Gross Gaitan – Does LCO envision a single firm deadline for applications or will this be an ongoing process where additional organizations may apply?
 - Response: It is critical to have a timeline just in the interest of using our resources efficiently. Can review on a case-by-case basis on why applications were received later.
 - Sandra Diaz – Was LCO planning to provide a space for the committee to weigh in on the application?
 - Response: Yes, the committee will have an opportunity to weigh in at the second meeting. Once LCO receives a list of the applicants, that list will be sent to all members of the committee. We will reconvene a second meeting where everyone will have a meaningful opportunity to discuss QO applicants in a public setting.
 - Chris Bouvier – Will there be opportunities in the future for new organizations to become qualified?
 - Response: Yes. This proposal is to get a name on the list by October 1, 2022. We envision others will have an opportunity to apply to become a qualified organization.
 - Alejandra Valles – The QO under AB 547 allows to contract with an MOU with a nonprofit, which is separate from the QO process.
 - Response: There will be an opportunity to work with a training partner, which is separate from the QOs.
 - Deanna Ping - Right now, the priority is to build the infrastructure to get his done by October 1, 2022. Once we have infrastructure, we can discuss what the list looks like, and get recommendations from the committee. We want to make sure that those who are qualified can get on the list. DIR wants to make sure there is a robust list that covers the geography of the state.
 - Sandra Henriquez – Will the advisory committee have an opportunity to review the application?
 - Response: Will open it up to the committee to discuss documentation and what would satisfy that criteria.
 - Yardenna Aaron – Would there be preferential status given to state-wide organizations, or organizations that focus on specific regions?
 - Response: Treat all applicants the same regardless of region. If an organization that covers a large geographic region, and meets all the

criteria, that organization would be approved.

- The intent of this was to show that there is a plan, and DIR wants the input of the committee. Hoping the committee can review and meet again next month.
- Conflict of Interest
 - The QO process as envisioned by AB 547, allows the committee to recommend to the LCO QOs to the list. A recommendation should be a show of support or non-support. Predictable that a committee member could also be a qualified organization applicant, and would be put in a position to advance his/her own interest. QO chosen by the committee will obtain a vested financial interest in the form of fees, training, and other non-financial interests when becoming a QO. Is there an inherent conflict with an applicant supporting himself or herself or rejecting another? LCO suggests there is a conflict.
 - LCO recommendation to address the conflict of interest:
 - QO applicant, who is also a committee member, is precluded from supporting himself/herself or opposing/rejecting others during the recommendation process. In other words, any QO/committee member cannot participate in that recommendation process. Only non-committee member applicants may participate in the recommendation process.
 - Questions/Comments
 - Alejandra Valles – Agree with LCO’s recommendation. Also, proposing that if there is a training partner hired on by the QO, that they recuse themselves as well.
 - Alejandra Domenzain – What do you mean by recommendation process? If there is a member, who is also a QO applicant, would he/she be able to provide comments for the committee to consider, but not vote?
 - Sandra Henriquez – There are other state bodies that are allowed to advise, but recuse themselves from the vote.

III. Next Steps

- LCO/DIR to meet internally to discuss what came out of this meeting
- Recommend look at section with the document criteria and be ready for discussion for the next meeting
- Questions/Comments
 - Andrew Gross Gaitan – Circulated to most of the committee a list of recs responding to these 4 discussion points. It was not intended as a final document, but to help guide the discussion. If we need to reschedule to continue this conversation, can we include as part of the meeting handouts?
 - Response: We can discuss your role, and possibly have you as a speaker to lead the discussion.
 - Sandra Diaz – Clarification that the application (scheduled to be posted week of July 5) to be delayed until next meeting; recommend a longer meeting (full day); alternate in-person meetings between Northern and Southern CA.