

CALIFORNIA APPRENTICESHIP COUNCIL

CALIFORNIA CODE OF REGULATIONS, TITLE 8
SECTIONS 202, 205, 227, 228, 229 and 230.1, and 231 – 232.7

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the California Apprenticeship Council (“Council”) proposes to amend sections 202, 205, 227, 228, 229 and 230.1, and to repeal sections 231 through 232.7 of its regulations in Division 1, Chapter 2, of Title 8 of the California Code of Regulations. The Council proposes to amend and repeal these regulations pursuant to its general rulemaking authority under Labor Code Section 3071 and its specific rulemaking authority under Labor Code Section 1777.7, with respect to the employment of registered apprentices on public works. The Council is proposing amendments for the purpose of implementing, interpreting, and making more specific the requirements of Labor Code Sections 1777.5 and 1777.7. These amendments will revise the definition of “apprenticeable occupation,” add definitions of “work process” and “registered apprentice,” restate the scope of apprenticeship public works regulations, delete a definition of “worker,” restate and clarify the requirements for employing apprentices at apprentice rates, including related notification requirements. The Council also proposes to amend two sections in order to revise cross-references to other procedural regulations, and it proposes to repeal a full set of hearing regulations rendered obsolete by the 2012 and 2014 amendments to Section 1777.7. (Stat. 2012, ch. 46, § 96 (SB 1038) and Stat. 2014, ch. 297 § 3 (AB 2744).)

In addition, the Council is proposing additional amendments to sections 205 and 212.2 that are part of a separate rulemaking on Apprenticeship Program Applications, Evaluations, and Reporting to implement SB 56 (2011) and certain parts of AB 235 (2018). Those amendments are included here to insure the public is aware of all changes under consideration and avoid the possibility of the Council adopting different versions of the same sections.

PUBLIC HEARINGS

The Council will hold public hearings on these proposals as follows:

December 12, 2019 at 10:00 a.m. until all comments have been received.
Junipero Serra State Building, Carmel Room
320 W. Fourth Street
Los Angeles, CA 90013

December 16, 2019 at 10:00 a.m. until all comments have been received.
Elihu Harris Oakland State Building, Room 12
1515 Clay Street
Oakland, CA 94612

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposals. The Council requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any person or authorized representative may submit written comments relevant to the proposals by mail or delivery to Eric Rood, Council Secretary and Chief, Division of Apprenticeship Standards (“DAS”), 1515 Clay Street, Suite 301, Oakland, CA 94612 or by email to CACsuggest@dir.ca.gov. To be considered, written comments must be received by the Council no later than 5:00 p.m. on December 18, 2019.

AUTHORITY AND REFERENCE

Authority: Labor Code Sections 1777.7 and 3071.

Reference: Labor Code Sections 1777.5, 1777.6, 1777.7, 3073.1, 3075, 3075.5, 3075.6 and 3075.7 of the Labor Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Council and DAS oversee and regulate apprenticeship programs in the State of California. The Council’s responsibilities include adopting regulatory standards governing the approval and operation of building and construction industry trades and firefighter programs, consistent with statutory requirements. The DAS’s responsibilities include approving and auditing programs, in accordance with standards adopted by the Council, to give workers skills and training needed to obtain well-paying jobs and provide employers with a highly skilled and experienced workforce.

This rulemaking focuses on the employment of apprentices on public works, which is governed by requirements and procedures set forth in Labor Code Sections 1777.5, 1777.6, and 1777.7. The Council’s regulatory authority with respect to these requirements is set forth in subdivision (g) of Section 1777.7, as follows. “The interpretation of Section 1777.5 and the substantive

requirements of this section applicable to contractors or subcontractors shall be in accordance with the regulations of the California Apprenticeship Council.” In other words, the Council establishes the rules on how to interpret and comply with statutory requirements.

Hearing Regulations: Historically, the DAS enforced the statutory and regulatory requirements governing the employment of apprentices on public works, through a penalty assessment and appeals process prescribed in prior versions of Section 1777.7. However, a 2012 amendment to that section (Stat. 2012, ch. 46, § 96 (SB 1038)) shifted these enforcement responsibilities from DAS to the Division of Labor Standards Enforcement (DLSE), which historically had authority to enforce all other public works requirements in the Labor Code. The same amendment eliminated the separate appeal process for DAS determinations in Section 1777.7, and required instead that determinations and appeals follow the same procedures prescribed for civil wage and penalty assessments and appeals (for prevailing wage violations) in Labor Code Section 1742. In 2014, Section 1777.7 was rewritten to more closely resemble the prevailing wage enforcement and appeal procedures, including a requirement for DLSE to issue a civil wage and penalty assessment in accordance with Labor Code Section 1741, when determining and assessing penalties for public works apprenticeship violations. (Stat. 2014, ch. 297 § 3 (AB 2744).)

These statutory amendments to Labor Code Section 1777.7 made the Council’s regulations on hearings and appeals from DAS determinations obsolete. Accordingly, the Council proposes to repeal those regulations at sections 232 through 234.2 of title 8. Most of these regulations are wholly superseded by the statutory amendments, making the repeal of those regulations “changes without regulatory effect” as defined in 1 Cal. Code Reg. section 100(a)(6). In addition, while repeal of 8 Cal. Code Reg. sections 229, 231, 234.1, and 234.2 is not compelled by the legislative changes, the Council believes those sections are unnecessary and redundant to other statutory and regulatory provisions. Finally, other regulations need to be amended in order to cross-reference the prevailing wage hearing regulations at 8 Cal. Code Reg. section 17201 et seq. rather than the obsolete hearing regulations being repealed through this rulemaking.

Definitions and Notice Requirements: Labor Code Section 1777.5 encourages contractors and subcontractors to employ registered apprentices on public works projects, including by authorizing payment of apprentice wage rates in lieu of the substantially higher journey level prevailing wages. To qualify for the lower wage rates, apprentices must be registered with DAS, training under DAS-approved apprenticeship standards (*i.e.* with a DAS/CAC-approved program), and at specified minimum ratio of apprentices to journeyworker. Apprentices may only be employed at the work of the craft or trade to which they are registered.

A contractor who employs workers in an “apprenticeable craft or trade” can have apprentices dispatched to a public works project by applying “to any apprentice program in the craft or trade that can provide apprentices to the site” or by obtaining them from an approved program that

already covers the contractor’s work. The statute defines “apprenticeable craft or trade” as “a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council.” (§ 1777.5(d).)

Subdivision (e) of Section 1777.5 requires contractors to send public works contract award information to apprenticeship programs that can supply apprentices to the work site. Notice requirements and time limits are spelled out in greater detail in 8 Cal. Code Reg. section 230. The following section 230.1, sets forth, among other things, requirements and time frames for requesting a program to dispatch apprentices to a job site.¹ A large number of penalty assessments under Labor Code Section 1777.7 arise from violations of these requirements, which have the effect of depriving apprentices of training opportunities on public works.

This rulemaking seeks to address specific issues that have come to light over the last several years, that make these requirements difficult to enforce and are attributable to a lack of clear or specific regulatory standards. The statutory definition of “apprenticeable craft or trade” offers no guidance on what craft or trade an apprentice belongs to when performing a particular type of work and what wage must be paid to that apprentice on a public works project. As consequence, the Council, on October 30, 2014, adopted a [Resolution on Employment of Apprentices on Public Works](#), which interpreted Section 1777.5 as requiring that the work process in which the apprentice is engaged be part of the apprenticeship program’s approved training standards, in order to qualify for the lower apprentice wage rate.² The Council now proposes to do by adopting regulatory definitions of “apprenticeable occupation,” “work process” and “registered apprentice,” as well as more specific standards on the use of apprentices. In addition, the Council proposes to delete a definition of “worker” in 8 Cal. Code Reg. section 228 that is both unnecessary and potentially in conflict with the broader understanding of that term in prevailing wage law.

DLSE has also run into difficulty enforcing the contract award information requirements in 8 Cal. Code Reg. section 230 and the request for dispatch of apprentice requirements in section 230.1, due to the lack of instructions in section 230 on how that notice must be transmitted, and the absence of any standards in either regulation concerning what constitutes proof that the required notice or request was actually sent to the intended recipient. These proposals address

¹ Contractors typically use the DAS Form 140 to comply with section 230, and the DAS Form 142 to comply with section 230.1, and the form numbers sometimes serve as a shorthand designation for the required notification procedures.

² A worker who does not meet the prescribed standards for receiving apprentice wages must be paid the journey level prevailing wage, regardless of qualifications or experience, consistent with the public works law’s overall objectives of protecting and benefiting workers on public works project and in turn providing the public with the skills and efficiency of well-paid workers. (*Lusardi Construction v. Aubry*, 1 Cal.4th 976 at 987 (1992)).

those concerns by establishing clear service and record retention requirements for both items, and by giving the contractor or subcontractor the burden of showing the required item was sent.

Conforming amendments: One of the sections that the Council proposes to amend, 205, is the subject of a separate Council rulemaking to implement application, reporting, and evaluation requirements adopted in SB 56 and AB 235. The proposed amendments from that rulemaking included here for informational purposes and to avoid the possibility of the Council adopting inconsistent versions of these sections at the conclusion of this rulemaking.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After conducting an evaluation of other regulations in this area, the Council has concluded that these are the only regulations concerning employment of apprentices on Public Works. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Specific Proposals

Section 202: This section governs investigations, hearings, and determinations on apprenticeship complaints outside the context of public works. The Council proposes to change the cross-reference in subsection (c)(3) so that it refers to the prevailing wage hearing regulations (8 Cal. Code Reg. § 17201 et seq.) rather than the obsolete regulations (§ 232 et seq.) being repealed.

Section 205 sets forth regulatory definitions for the subchapter on Apprenticeship in Title 8. The Council proposes to add an additional sentence to the definition of “apprenticeable occupation” and to adopt new regulatory definitions of the terms “work process” and “registered apprentice.” These proposals also carry over two changes from the SB 56 rulemaking: changing the term “journeyman” to “journeyworker” and adding a new definition of “acceptable electronic format” for purposes of meeting statutory electronic submission requirements imposed on building and construction trades industry programs.

Section 227 sets forth the Scope and Application of the regulations in Article 10 on the use of apprentices on public works. The Council proposes to restate this section, consistent with the other substantive proposals included in this rulemaking.

Section 228 is another set of definitions applicable to the public works apprenticeship regulations. The Council proposes to delete this section’s definition of “worker.”

Section 229 governs Service, Notice, and Computation of Time requirements for notices required

by the public works apprenticeship regulations. The Council proposes to make minor clarifying edits to the existing text of subsections (a), (b), and (c), and to add a new subsection (d) to set forth specific service, record retention, and burden of proof requirements for the contract award information and request for dispatch of apprentice required under sections 230 and 230.1. The Council also proposes to add a new subsection (e) clarifying that requests for review of a civil wage and penalty assessment are governed by the prevailing wage hearing regulations at 8 Cal. Code Reg. § 17201 et seq. rather than this section.

Section 230.1 governs the Employment of Apprentices on Public Works. The Council proposes to redraft subsection (c) to set forth its interpretation of the statutory requirements with more specificity, including that apprentices be training under program standards that include the work processes the apprentice is performing and that they not be assigned work outside those work processes.

Section 231 governed complaints and determinations on public works apprenticeship violations prior to the 2012 and 2014 amendments to Labor Code Section 1777.7. The Council proposes to repeal this section.

Sections 232 through 232.70 are obsolete sections governing appeals and hearings on public works apprenticeship violations prior to the 2012 and 2014 amendments to Labor Code Section 1777.7. The Council proposes to repeal these sections.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Council has made the following initial determinations with respect to these proposals and invites further comment on these specific impacts:

- Costs or savings for state agencies: These proposals are expected to save DLSE the cost of investigating and enforcing complaints over dispatch violations in which the contractor has failed to maintain copies of required notices. The anticipated savings are approximately \$17,000 per year (based on a reduction of 10 complaints a year, which is 1/6 the caseload of a DLSE investigator at a median cost of \$100,000 per year).
- Local Mandate: **None.**
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: **None.**

- Other nondiscretionary costs or savings imposed upon local agencies: **None.**
- Costs or savings in federal funding to the state: **None.**
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: **None.**
- Impact on the creation or the elimination of jobs or business, and the expansion of businesses within the State of California, or effect on small businesses: **None.**
- Significant effect on housing costs: **None.**
- Cost impacts on representative private person or small business: **None.** The Council is not aware of any cost impacts that a representative private person or small business would necessarily incur in reasonable compliance with these proposals. The cost impacts of these proposals are limited to public works contractors and subcontractors engaged in apprenticeable trades. These proposals impose an express record retention requirement on all such contractors, something that is already a commonplace and prudent practice for the vast majority (98% or more) of them, in order to eliminate investigation and proof problems with those who claim either to have lost or never to have copied the notices.

The other potential and significant cost element of these proposals is limited to a handful of contractors who may be using registered apprentices to perform specific work processes in which the apprentices are not being formally trained, that is, a contractor using registered apprentices and paying them apprentice rates for specific work processes in which the apprentices are not being formally trained. The Council believes the maximum collective impact on this handful of contractors is well under \$1 million annually and may be none at all when offset by increased productivity of better trained workers.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT:

The Council has made initial determinations that these proposals: (1) will not create or eliminate any jobs; (2) will not create new businesses or eliminate existing businesses within the State of California; (3) will not affect the expansion of businesses currently doing business within the State of California; and (4) will not impact the regulation of health and welfare of California residents and worker safety.

BENEFITS OF THE PROPOSED ACTION

These regulations will clarify and make compliance with public works apprenticeship requirements easier, for the benefit of contractors, apprentices, and the public alike. They should also help curb the use of apprentices as cheap labor for work that is not part of their structured and approved training program. In addition, these regulations will make it easier for DLSE to enforce these requirements and save now devoted to adjudicating “my word against your word” disputes over whether and when required notices were sent.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Council must determine that no reasonable alternative considered by the Council or that has otherwise been identified and brought to the Council’s attention (1) would be more effective in carrying out the purpose for which the action is proposed; (2) would be effective and less burdensome to affected private persons than the proposed action; or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Council invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Deneen Phillips
California Apprenticeship Council
1515 Clay Street, Suite 301, Oakland, CA 94612
Telephone: (510) 879-3966

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, or other information upon which the rulemaking is based to Ms. Phillips at the above address.

The backup contact person for these inquiries is:

Glen Forman, Deputy Chief
Division of Apprenticeship Standards
1515 Clay Street, Suite 301, Oakland, CA 94612
Telephone: (510) 879-3965

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSALS

The Council will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at the above address.

Website: Principal rulemaking documents, including the text, this notice, and the Initial Statement of Reasons may also be accessed through the Department of Industrial Relations' website at www.dir.ca.gov/Rulemaking/DIRProposed.html.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Council may adopt the proposed regulations substantially as described in this notice. If the Council makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Council adopts the regulations as revised. Any such modifications will also be posted on the Department of Industrial Relations' website listed above.

Requests for copies of any modified regulations may be sent to the attention of the contact person(s) listed above. The Council will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS AND THE RULEMAKING FILE

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Council at the address indicated above, or accessed on the Department of Industrial Relations' website listed above.