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**Julie A. Su**

California Labor Commissioner
Division of Labor Standards Enforcement

December 2014

Dear Farm Labor Contractor:

As this year draws to a close, I am aware that concerns over what you need to do to be in compliance with new laws can feel overwhelming and stressful. My office wants to help. This is why I wanted to take the time to write to ensure that you know the Governor signed Senate Bill No. 1087. This letter is to assist you in preparing yourself, your staff, and your operations for the changes to the FLC licensing program that take effect on January 1, 2015. Specifically, this bill includes the following changes:

1. Hours of required instruction increase from 8 to 9. You will now be required to complete 9 hours of courses to qualify for FLC registration. Of those 9 hours 1 hour must be for sexual harassment prevention training (Labor Code section 1684(c)).

- DLSE *strongly* encourages all licensees and applicants to participate in the additional hour of education in sexual harassment identification and prevention as soon as possible. The legislature passed, and the Governor signed, this bill because of concerns about sexual harassment of farmworkers. The more you understand this issue and how to prevent it, the better for everyone.
- If you have already completed 8 hours of continuing education by December 2014 per the existing requirements, you will not be required to complete the additional hour to get a renewal in 2015. We will honor the 8 hours that you completed as of December 2014 and consider that a fulfillment of the education requirements for renewal purposes.
- However, if you have not completed your 8 hours of instruction by December 31, 2014, you will be required to complete 9 hours beginning January 1, 2015, including the one extra hour of sexual harassment identification and prevention. We have been working with our providers to be sure that this is available to you and that access to the new requirements is simple.

In short, in order to ensure that FLCs receive the critical training required, but are not unduly burdened if you have already completed your continuing education for the 2015 renewal cycle under the existing requirements, completion certificates dated up to December 31, 2014 showing completion of eight (8) hours of continuing education will be accepted as satisfaction of the continuing education requirement for license applications presented to DLSE in 2015. Completion certificates for continuing education taken on or after January 1, 2015 must indicate completion of nine (9) hours of continuing education to be accepted as satisfying the continuing education requirement for new and renewal licenses.

The approved FLC class providers will implement the class changes on January 1, 2015. Please see the revised list of required approved core topics and alternate topics enclosed with this letter.

2. Mandatory training for employees on sexual harassment identification and prevention. FLCs will need to provide your supervisory and non-supervisory personnel with training in the prevention of sexual

harassment in the workplace (Labor Code section 1684(a)(8)(A)). See the attached “Resources for Sexual Harassment Training” sheet for assistance in developing your training program.

3. Prohibition on licenses to those who have committed sexual harassment. The new law prohibits a person who within the preceding 3 years has been found by a court or an administrative agency to have committed sexual harassment of an employee, or who within the preceding 3 years employed any supervisory employee whom he or she knew or should have known has been found to have committed sexual harassment of an employee, from getting an FLC license (Labor Code section 1685(c)).

- DLSE will provide on our website a “Supervisory Employee Sexual Harassment Disclosure Statement” that FLCs should direct your supervisory employees to fill out and sign. This statement confirms that your supervisors have not been found by a court or any administrative agency to have committed sexual harassment within the preceding three years. This form will be available by January 1, 2015.

4. License revocation, suspension, or denial for sexual harassment. The new law authorizes the Labor Commissioner to revoke, suspend or refuse to renew an FLC license if the licensee has been found to have committed sexual harassment of an employee or has employed a supervisory employee whom he or she knew or should have known has been found to have committed sexual harassment of an employee (Labor Code section 1690(g)).

5. Increased fines for engaging in farm labor contracting activities after license has been suspended, revoked, or denied. The fine for any FLC who engages in farm labor contracting activities after license has been suspended, revoked, or denied has been increased from \$5,000 to \$10,000. The punishment for continuing operation as an FLC following suspension, revocation, or denied reissuance is now a fine of not less than ten thousand dollars (\$10,000), or imprisonment for not less than six months and not more than one year, or both (Labor Code Section 1697(c)).

6. Increased fees. The application fee is increased to \$600. The examination fee is increased to \$184. The additional license fee will go toward funding of the Farm Labor Contractor Enforcement Unit and the Farm Labor Contractor License Verification Unit. SB 1087 provides for an increase in the maximum allowable fee DLSE can collect for the written exam to \$200 to cover the costs of administering the exam. The increase in the written exam fee to \$184 reflects the actual cost of administering the exam which has been underfunded for some years.

If you would like to read more about Senate Bill No. 1087 you can visit the Legislature’s website at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1051-1100/sb_1087_bill_20140928_chaptered.pdf

Thank you for your ongoing commitment to compliance and for the important role you play in this valued industry in California.

Sincerely,

Julie A. Su
Labor Commissioner

Resources for Sexual Harassment Training
Labor Commissioner Julie A. Su
Labor Code section 1684(a)(8)(A)

SB 1087 includes a new requirement for training for employees on sexual harassment identification and prevention. California employers with 50 or more employees have been required to provide training in Sexual Harassment identification and prevention to all supervisors since 2007. As such there are numerous online training courses and materials that can provide guidance as you develop your program of sexual harassment training for your operation. To assist you in this task we have compiled a small sample of websites that contain training materials and information about sexual harassment identification and prevention in the workplace.

- [Department of Fair Employment and Housing sexual harassment PowerPoint training presentation. http://www.dfeh.ca.gov/res/docs/ppt/Sexual%20Harassment%20Prevention%20Training%20upload%20revised%20FINAL%2008-14-13.pptx](http://www.dfeh.ca.gov/res/docs/ppt/Sexual%20Harassment%20Prevention%20Training%20upload%20revised%20FINAL%2008-14-13.pptx).
(Clicking this link will open a new browser window. Clicking the link that appears will initiate download of a PowerPoint (pptx) presentation on Sexual Harassment Identification and Prevention.)
- [Department of Fair Employment and Housing Sexual Harassment Guidelines http://www.dfeh.ca.gov/Publications_StatLaws_SexHarrass.htm](http://www.dfeh.ca.gov/Publications_StatLaws_SexHarrass.htm)
- [Department of Fair Employment and Housing 2 hour Webinars on Sexual Harassment http://www.dfeh.ca.gov/Webinars.htm](http://www.dfeh.ca.gov/Webinars.htm)

In addition to the DFEH links provided above, CalChamber also offers complete two hour sexual harassment training programs for both [supervisors](http://store.calchamber.com/products/10032192/HPTC2/Harassment-Prevention-Training-Supervisor) <http://store.calchamber.com/products/10032192/HPTC2/Harassment-Prevention-Training-Supervisor> and [employees](http://store.calchamber.com/products/10032192/HPTC1/Harassment-Prevention-Training) <http://store.calchamber.com/products/10032192/HPTC1/Harassment-Prevention-Training>

Per the new statutory requirement, the training may be provided by either the licensee or an appropriate designee of the licensee. DLSE believes it is important that individuals tasked with providing training in sexual harassment prevention and identification be minimally qualified to provide such training. Licensees should ensure that designated trainers have knowledge of the procedures and practices in place for their operation that address any complaint or report by any employee of sexual harassment.

As part of the mandated training employers will be required to provide the Department of Fair Employment and Housings pamphlet “Sexual Harassment: The Facts about Sexual Harassment” DFEH-185.

- [The pamphlet can be found here. http://www.dfeh.ca.gov/res/docs/Publications/DFEH-185.pdf](http://www.dfeh.ca.gov/res/docs/Publications/DFEH-185.pdf) (Clicking this link will open a new browser window)

FLC’s will be required to keep a record of the training provided to employees and supervisors. At a minimum the training record should include:

- (i) Name, address, and telephone number of the individual(s) who performed the training
- (ii) The date(s) on which the training and information were provided;
- (iii) Names of all employees to whom the training and information were provided;
- (iv) A description of the training and information provided and, if written materials were provided (other than the DFEH-185 which is required to be provided), include a copy of such materials; and
- (v) A certification by the licensee or designated person of the licensee that the record is true and complete

FLC Continuing Education Requirements
Labor Commissioner Julie A. Su
Labor Code section 1684(c)

Core Topics for New FLC or FLC with less than 5 years in the business or those with 2 or more citations within the last 2 years

I. Farm Labor Contractor Requirements (**3 hours**)

- A. Wage and Hour (minimum wage, overtime, piece rate, meal/rest breaks)
- B. Workers' Comp Insurance requirement
- C. AB 1897 and definition of client employer; obligations of client employers
- D. Labor Code 2810 Labor Costing
- E. Proper information to employees (226 itemized wage statements, LC 2810.5 notice)
- F. Transportation and Housing
- G. Child labor
- H. Other requirements as dictated by legislative action

II. Health & Safety (**2 hours**)

- A. Injury and Illness Prevention Program
- B. Heat Illness (including First Aid)
- C. Pesticides
- D. Field Sanitation
- E. Electrical hazards
- F. Agriculture equipment and operation
 - Hand held and working tools
 - Ladders (fixed and portable metal ladders)
 - Machine Guarding
 - Helmets, earplugs, gloves, headgear, and other personal protective gear
 - Lock Out/Tag Out/Block Out--Hazardous Energy Stabilization
- G. Other requirements as directed by legislative action

III. Management and Supervision Education for FLC and Supervisors (**1 hour**)

- A. How to be a good manager, create a positive work environment, and proper role of supervisor
- B. Communication skills
- C. How to do an adequate investigation into labor law violations reported to you at your workplace
- D. Hiring, discipline and termination issues

IV. Sexual Harassment Prevention and Identification in the Workplace (**1 hour**)

- A. The definition of sexual harassment under applicable state and federal law.
- B. Why sexual harassment is illegal & legislative intent behind this training requirement
- C. A description of sexual harassment, utilizing examples, particularly those commonly occurring in the agricultural industry
- D. The internal complaint process of the employer available to the employee.

- E. The legal remedies and complaint process available through the Department of Fair Employment and Housing.
- F. Directions for how to contact the Department of Fair Employment and Housing.
- G. The protection against retaliation provided under current law.

V. Retaliation Laws & Prohibitions on Retaliation (**1 hour**)

- A. Labor Code 98.6 and Discrimination in the workplace in general
- B. Stability in labor relations, collective bargaining and concerted activity

VI. Good grower relations for a successful business (**1 hour**)

FLC Continuing Education Requirements
Labor Commissioner Julie A. Su
Labor Code section 1684(c)

Core Topics for Experienced FLC with at least 5 years or more in the business without violation

I. Overview of Changes in Farm Labor Contractor Requirements (**1.5 hours**)

- A. Wage and Hour (minimum wage, overtime, piece rate, meal/rest breaks)
- B. Workers' Comp Insurance requirement
- C. AB 1897 and definition of client employer; obligations of client employers
- D. Labor Code 2810 Labor Costing
- E. Proper information to employees (226 itemized wage statements, LC 2810.5 notice)
- F. Transportation and Housing
- G. Child labor
- H. Other requirements as directed by legislative action

II. Overview of Changes in Health & Safety (**1.5 hours**)

- A. Injury and Illness Prevention Program
- B. Heat Illness (including First Aid)
- C. Pesticides
- D. Field Sanitation
- E. Electrical hazards
- F. Advanced Safety & Health
 - Personal Fall Protection Systems
 - Excavation Fall Protection
- G. Agriculture Equipment and Operation
 - Hand held and working tools
 - Ladders (fixed and portable metal ladders)
 - Machine guarding
 - Helmets, earplugs, gloves, headgear, and other personal protective gear
- H. Other requirements as directed by legislative action

III. Advanced Effective Management and Supervision (**1.5 hours**)

- A. How to be a good manager, create a positive work environment, and proper role of supervisor
- B. Communication skills
- C. How to do an adequate investigation into labor law violations reported to you in your workplace

IV. Sexual Harassment Prevention and Identification in the Workplace (**1 hour**)

- A. The definition of sexual harassment under applicable state and federal law.

- B. Why sexual harassment is illegal & legislative intent behind this training requirement
- C. A description of sexual harassment, utilizing examples, particularly those commonly occurring in the agricultural industry
- D. The internal complaint process of the employer available to the employee.
- E. The legal remedies and complaint process available through the Department of Fair Employment and Housing.
- F. Directions for how to contact the Department of Fair Employment and Housing.
- G. The protection against retaliation provided under current law.

V. Best practices for good grower relations (**1.5 hours**) (include information on AB 1897 and client employer obligations)

Alternate Topics (must have 2 hours)

I. Immigration issues in the agriculture industry (including H-2A responsibilities)

II. Criminal provisions of the Labor Code

III. Health care reform: what does it mean for you?

IV. Landlord and Tenant Rights

V. Americans with Disabilities Act

VI. Discrimination in the Workplace & Hostile Work Environment

VII. Overview of changes in Retaliation Laws & Prohibitions on Retaliation

- A. Labor Code 98.6 and discrimination in the workplace in general
- B. Stability in labor relations, collective bargaining and concerted activity