

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Labor Standards Enforcement**

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS  
AND NEW DOCUMENTS ADDED TO THE RULEMAKING FILE**

**Subject Matter of Regulations: Foreign Labor Contractor Registrations**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
Sections 13850 et seq.**

NOTICE IS HEREBY GIVEN that the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, pursuant to the authority vested in her by Labor Code sections 59, 95, and Business & Professions Code section 9998.11, and in accordance with Government Code section 11346.8(c), proposes to modify the text of the following proposed regulations:

New Subchapter 14 of existing Chapter 6 of Division 1, of Title 8, California Code of Regulations, Foreign Labor Contractor Registrations:

Article 1. Scope, Coverage and Definitions

Section 13850 Definitions

Section 13851 Coverage; Exemption for Business Directly Recruiting Workers;  
Non-Employee Agents as Foreign Labor Contractors

Article 2. Registration

Section 13853 Application for Registration as a Foreign Labor Contractor

Section 13855 Character, Competency and Responsibility

Section 13856 Registration Certificate

Section 13857 Surety Bond; Establishing Gross Income Receipts

Article 3. Denial of Registration; Suspension and Revocation

Section 13858 Actions on Applications and Registrations

Section 13859 Notice of Denial, Suspension or Revocation; Notice of Defense

Section 13860 Failure to File Notice of Defense; Discovery; Notice of Hearing

Section 13861 Conduct of Hearing; Rules of Evidence; Role of Hearing Officer

Section 13862 Rights of Parties at Hearing; Taking of Evidence; Rules of Procedure

Section 13863 Proposed Decision; Decision of Labor Commissioner; Judicial Review

Section 13864 Periods of Suspension or Revocation

Article 4. Disclosure to Labor Commissioner of Use of Foreign Labor Contractor

Section 13865 Employer Disclosure to Labor Commissioner of Use of Foreign Labor  
Contractor

Section 13866 Validity and Duration of Disclosure

Section 13867 Amended Disclosure

Section 13868 Contracting with an Unregistered Foreign Labor Contractor

Article 5. Prohibited Fees & Costs; Post-Hire Costs and Expenses; Disclosures to Worker  
by Contractor

Section 13870 Unlawful Recruitment Fees

Section 13871 Recruitment Fees and Costs Prohibited

Section 13872 Other Fees, Costs, and Expenses Prohibited Post-Hire/Selection

Section 13873 Allowable Post-Hire Costs and Expenses to be Itemized and Disclosed

Section 13874 Disclosure by Contractor to Worker

**NOTICE IS FURTHER GIVEN** that the Labor Commissioner is supplementing the Initial Statement of Reasons to summarize and explain the proposed modifications, as indicated in the accompanying document titled “Supplement to Initial Statement of Reasons,” and is adding the documents identified below to the rulemaking file. A copy of the supplement and other documents will also be included in the rulemaking file and posted on DLSE’s website at: <https://www.dir.ca.gov/Rulemaking/DIRProposed.html>

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS REGARDING MODIFICATIONS TO TEXT**

Members of the public are invited to present written comments regarding these proposed modifications and additional documents identified below. **Only comments directly concerning the proposed modifications to the text of the regulations and additional documents identified below will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Jennifer Stevens, Legislative Analyst and Regulations Coordinator  
Department of Industrial Relations  
Division of Labor Standards Enforcement, Legal Unit  
2031 Howe Avenue, Suite 100  
Sacramento, CA 95825

The Division’s contact person must receive all written comments concerning the proposed modifications to the regulations **no later than 5:00 p.m. on July 6, 2018**. Written comments may also be sent electronically (via email) using the following email address: [DSLERegulations@dir.ca.gov](mailto:DSLERegulations@dir.ca.gov)

Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (916) 263-2920. Due to the inherent risks of non-delivery by facsimile transmission, the Division suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

**Comments sent to other email addresses or facsimile numbers will not be accepted. Comments sent by email or facsimile are subject to the deadline set forth above for written comments.**

## **AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE**

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for inspection at the Department of Industrial Relations, Division of Labor Standards Enforcement, 2031 Howe Avenue, Suite 100, Sacramento, California 95825, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Please contact the Division's regulations coordinator, Ms. Jennifer Stevens, at (916) 263-3400 to arrange to inspect the rulemaking file.

## **ADDITIONAL DOCUMENTS ADDED TO THE RULEMAKING FILE**

The following documents are added to the rulemaking file which may be commented upon within the 15-day time period specified in this notice:

### **Documents Referenced in the Proposed Regulations:**

- Application for Registration (DLSE 701)
- Foreign Labor Contractor Bond (DLSE 702)\*
- Foreign Labor Contractor Disclosure Statement (DLSE 703)
- Employer Disclosure Statement: Use of Foreign Labor Contractor (DLSE 704)
- Amended Employer Disclosure Statement: Use of Foreign Labor Contractor (DLSE 704 A)
- Corporation Statement of Information (Form SI-550)
- LLC Statement of Information (Form LLC-12)
- Statement and Designation by Foreign Corporation (Form S&DC-S/N)
- Flyer: *All Workers in California Have Rights*
- List: California Labor Commissioner offices

## **FORMAT OF PROPOSED MODIFICATIONS**

### **Proposed Text Noticed for this 15-Day Comment Period Identifying Modified Text:**

The proposed changes to the text of the regulations are indicated by bold underlined text to identify additions (e.g. **added language**) and bold strikeout to identify deletions (e.g., ~~**deleted language**~~) made upon the original proposed text.

## **SUMMARY OF PROPOSED TEXT CHANGES**

Proposed Section 13850:

- Subsections (a) and (b) are amended to further clarify the definitions of “recruiting” and “soliciting.”
- Subsection (c) contains minor technical, nonsubstantial edits.

\* The DLSE number on the bond form approved by the Attorney General's Office and the Office of Administrative Law has been updated to DLSE 702; no other changes have been made to this form.

Proposed Section 13851:

- Subsection (a) contains minor technical, nonsubstantial edits.
- Subsection (e)(2) adds “and liabilities.”

Proposed Section 13853:

- The preamble is revised to include an email address for submission of registration applications, to correct the mailing address, and to provide that an online application may be made available.
- Subsection (a)(5) adds a new requirement that the applicant provide domestic and international locations where the applicant is doing business.
- Subsection (a)(6) is revised to require applicants to provide their foreign identification number, if applicable.
- Subdivision (a)(6)(B) corrects that corporate officers must provide a home, not business address, consistent with the other persons who have financial interests in the applicant’s business, and provides an update to the title of a form.
- Subsection (a)(10) adds a new requirement that the applicant indicate any license, registration, or permit obtained within the last 5 years pursuant to any state or federal law, or law of a foreign country, by the applicant or persons who have financial interests in the applicant’s business.
- Subdivision (a)(11)(A) adds the word “entity,” adds subdivision (a)(2), and provides a grammatical correction.
- Subdivision (a)(11)(B) corrects a typographical error.
- Subdivision (a)(15)(E)(iii) substitutes the phrase “which prohibits false imprisonment” with the phrase “relating to human trafficking.”
- Subsection (a)(15)(H) adds the term “omission.”
- Subsection (b)(2) updates the title of a Secretary of State form.
- Subsection (c) is added, to allow the Labor Commissioner to request any additional documentation that may be needed.

Proposed Section 13864:

- Subsection (c) corrects a typographical error.

Proposed Section 13865:

- Subsection (b)(1) deletes a parenthetical reference to a definition in B&P Code § 9998.1(c) and corrects a typographical error.
- Subsection (c)(1) updates the Labor Commissioner’s address.
- Subdivision (c)(1)(C) removes from the employer’s disclosure statement a requirement to provide information regarding each partner in a partnership, each member of an LLC, and each corporate officer of a corporation.

Proposed Section 13867:

- Subsection (a) updates the Labor Commissioner’s address.
- Subsection (b) corrects a typographical error.

Proposed Section 13868:

- A typographical error is corrected.

Proposed Section 13870:

- Subsection (a) deletes the words “prospective” and “by a contractor” and corrects a typographical error.
- Subdivision (a)(1)(A) adds “placing.”
- Subdivision (a)(1)(F) adds “and visa processing fees.”
- Subdivision (a)(1)(P) adds “or third party” and “labor broker.”
- Subdivisions (a)(1)(T) and (a)(1)(U) are added, pertaining to collateral requirements and fees to secure future employment opportunities.

Proposed Section 13871:

- “Prospective” is deleted.

Proposed Section 13872:

- The title is revised to remove “Post-Hire/Selection.”
- Subsection (a) is deleted.

Proposed Section 13873:

- The title is revised to add “potentially.”
- Subsection (a) adds “including for the items listed in B&P Code section 9998.2.5, as long as these costs, expenses, or deductions are customarily assessed against similarly-employed workers in the United States and permitted under governing state and federal law” and removes the list provided in (a)(1)-(7).
- Subsection (b) deletes “any of the items in subsection (a)” and adds “be charged.”
- Subsection (c) is deleted.
- Reference notes add 9998.8(e).

Proposed Section 13874:

- Subsection (a) deletes “but in no event later than the time for applying for a work visa” and updates the Labor Commissioner’s address.
- Subdivision (b)(2)(A) substitutes “employer” for “contractor.”
- Subdivision (b)(6)(A) adds “including any production standards.”
- Subdivision (b)(6)(I) is deleted.
- Subdivision (b)(6)(J) is revised to substitute “Guarantee” with “Any guarantee” and to add a parenthetical stating “or 6-week period for employment periods lasting less than 120 days.”
- Subdivision (b)(6)(K) is revised to substitute “Penalties” with “Any penalties” and to add “to the extent that such penalties do not violate governing state or federal law.”
- Subdivision (b)(8) removes a reference to Section 13872.
- Subdivision (b)(10):
  - Adds that the foreign labor contractor is required to include as an attachment the Department of Industrial Relations flyer, *All Workers in California Have Rights*
  - Substitutes “Division 3, Chapter 21.5” for “Section 9998”

- Adds a reference to the federal H-2B regulations at 20 C.F.R. Part 655 and 29 C.F.R. Part 503
- Adds to the anti-retaliation language “discriminate against you or your family in retaliation” for exercising rights
- Adds a toll-free number for the Labor Commissioner, 1-844-LABOR-DIR or 1-844-522-6734

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## **DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION**

The Labor Commissioner is updating the following initial determination:

Cost or savings to any state agency: Costs to state agencies will be absorbed within existing budgets and resources.

## **CONTACT PERSON FOR INQUIRIES REGARDING PROPOSED CHANGES**

Inquiries regarding the proposed modifications may be directed to:

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Department of Industrial Relations  
Division of Labor Standards Enforcement, Legal Unit  
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San Francisco, CA 94102  
415-703-5252  
lmoskowitz@dir.ca.gov