

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT

ADDING SUBCHAPTER 13: JANITORIAL REGISTRATION AND TRAINING

ADOPTING SECTIONS 13820 THROUGH 13822, INCLUSIVE, REGULATING
SEXUAL VIOLENCE AND HARASSMENT PREVENTION TRAINING FOR
PROPERTY SERVICE WORKERS

INITIAL STATEMENT OF REASONS

Background and Summary

California Labor Code sections 1422 and 1429.5 authorizes the Labor Commissioner, Chief of the Division of Labor Standards Enforcement (“DLSE”), to adopt regulations to implement Part 4.2 (sections 1420 through 1434), Property Service Workers Protection. Applicable to janitorial services contractors,¹ these statutory provisions include, among other things, a sexual violence and harassment prevention training requirement pursuant to Labor Code sections 1429(a)(10) and 1429.5. The proposed regulations implement, interpret, and make specific the mandate set forth in section 1429.5.

In 2015, the PBS documentary series *Frontline* – in collaboration with Univision, the Investigative Reporting Program at the University of California (“UC”), Berkeley, the Center for Investigative Reporting, and PBS station KQED – produced *Rape on the Night Shift*, an exposé of the prevalence, gravity, and impunity of sexual harassment of janitorial workers across the United States, many of whom are immigrant women. According to a subsequent report by the Labor Occupational Health Program at UC Berkeley, the janitorial services industry “is structured in a way that isolates workers who are uniquely vulnerable to sexual harassment, and then creates conditions in which workers are afraid to step forward to report harassment.”²

In September 2016, Assembly Bill (“AB”) number 1978³ was enacted to add Part 4.2 to the Labor Code requiring janitorial services contractors to register annually with the Labor Commissioner in accordance with prescribed procedures. The registration requirement went into effect on July 1, 2018. Registration requirements include paying application and annual renewal fees, providing specified information, and maintaining records as prescribed.

¹ Section 1420(e)(1) defines a covered employer as “any person or entity that employs at least one employee and one or more covered workers and that enters into contracts, subcontracts, or franchise arrangements to provide janitorial services.”

² Helen Chen, Alejandra Domenzain, and Karen Andrews (May 2016), *The Perfect Storm: How Supervisors Get Away with Sexually Harassing Workers Who Work Alone at Night*, Report of the Labor and Occupational Health Program, University of California, Berkeley, available at <http://lohp.org/the-perfect-storm/>.

³ AB 1978 was introduced by San Diego Assemblymember Lorena Gonzalez.

Effective January 1, 2020, pursuant to Labor Code sections 1429(a)(10) and 1429.5, registration and renewal of registration requires sexual violence and harassment prevention training biennially for both janitorial workers and their supervisors. This regulatory proposal sets forth the sexual violence and harassment training requirements.

Section 1429.5 mandates consideration of the Fair Employment and Housing Act (“FEHA”) requirements of Government Code section 12950.1 in developing this proposal. Since enactment of AB 1978, Senate Bill (“SB”) numbers 396 (2017) and 1343 (2018) were enacted, changing and expanding FEHA’s sexual harassment training requirements under Government Code section 12950.1. SB 396 added the requirement to provide harassment training based on gender identity, gender expression, and sexual orientation. Fair Employment and Housing Council implementing regulations, 2 CCR § 11024, will add, among other things, peer-to-peer trainers as individuals qualified to conduct training. SB 1343 added a requirement to provide training to non-supervisors (previously training was only required for supervisors), expanded the FEHA training requirement to employers with five or more employees (previously training was only required for employers with 50 or more employees), and directed the Department of Fair Employment and Housing (“DFEH”) to provide training courses on its website. This regulatory proposal contemplates the existing requirements of Government Code section 12950.1 and the implementing regulations, and ensures alignment with FEHA’s sexual harassment training content and qualified trainer requirements.

Labor Code section 1429.5 mandates a process for adopting regulations to implement the new sexual violence and harassment training requirement. Accordingly, the Director of the Department of Industrial Relations (“DIR”), convened an advisory committee to provide input and recommendations on the proposal. The advisory committee included representatives of:

- DIR;
- DLSE;
- Division of Occupational Safety and Health;
- DFEH;
- The Service Employees International Union, United Service Workers West, which represents over 40,000 property service workers in California;
- Four janitorial services employers;
- Advocacy groups for victims of sexual assault and domestic violence, women’s civil rights, property service workers, and occupational health.

The Advisory Committee met on January 24, June 13, and October 11, 2017, and on February 4 and 11, 2019, providing input at these meetings and in correspondence.

Proposed new sections 13820 through 13822 of Title 8 of the California Code of Regulations are the result of extensive stakeholder involvement. The proposed regulations specify trainer qualifications and prescribe the frequency, duration, language, literacy level, modes, techniques, content, and documentation of sexual harassment prevention training for the janitorial services industry.

Specific Purpose and Necessity of Proposed Action, Gov. Code § 11346.2(b)(1)

Each proposed section addresses the problem of the sexual harassment of janitorial services workers and is reasonably necessary to carry out the authority and purposes for which that section is proposed.

Section 13820, Definitions

Specific Purpose

The purpose of this proposed section is to provide definitions specific to the use of terms in the proposed regulations to establish training requirements.

Necessity

Specific definitions of key terms are necessary to ensure that their meaning is clear and they would be interpreted consistently by the public, enforcement agencies, and the courts. To adhere to and enforce statutory requirements, the regulated community, DLSE, and courts must be able to rely on clear regulations as standards that construe and implement those requirements.

Subsection (a), “Covered worker”

Labor Code section 1420(a) defines the term “covered worker” by specifying the nature of the worker’s job (janitor, as defined by the US Department of Labor), proportion of work (predominantly working as a janitor), and employment status (employee, independent contractor, or franchisee). This definition excludes certain duties (when predominant, final cleanup of debris, grounds, and buildings near completion of a construction, alteration, demolition, installation, or repair work project, including street cleaning). Labor Code section 1429.5 requires biennial in-person sexual violence and harassment prevention training for “employees” covered by Part 4.2 (sections 1420 through 1434), the Property Service Workers Protection Act. As provided in the definition of “covered worker” in Labor Code section 1420(a), the employees covered by this law are employees who predominantly work as janitors. Therefore, the training requirement applies to these janitorial employees. Following FEHA [2 CCR § 11024(a)(3)], the proposed subsection also specifies that the worker’s status may be full time, part time, or temporary.

This proposed definition, consistent with that in Labor Code section 1420(a), is necessary to establish which workers the proposed regulations protect. Employment status was added for clarification and to be consistent with FEHA.

Subsection (b), “Employer”

The term “employer” is defined by reference to Labor Code section 1420(e), which specifies the employer’s legal status (person or entity), number of employees (one or more), number of covered workers (one or more), and business undertaking (enters into contracts, subcontracts, or franchise arrangements to provide janitorial services). This designation also encompasses “covered successor employer,” defined as an employer that:

- Uses substantially the same equipment, supervisors, and workforce to offer substantially the same services to substantially the same clients as a predecessor employer (with specified exceptions);
- Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor employer; or
- Is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor employer or of any person who had a financial interest in the predecessor employer.

The definition in section 1420(e) is cited to ensure that the term is consistent with the Labor Code.

Subsection (c), “Training”

Proposed subsection (c) would establish training as “interactive” by definition, meaning that it is in-person and provided by a trainer. However, this definition differs from that of “effective interactive training” under FEHA [2 CCR § 11024(a)(2)]. While both provisions authorize the use of webinar and e-learning training methods, the proposed definition restricts the role of computer-based methods, prohibiting an employer from relying on them entirely.

In qualifying “training” with the adjective “in-person” in section 1429.5, the Legislature sought to ensure that employers would use instructional modes appropriate for the workforce that the statute was enacted to protect. Positions in janitorial services generally do not require computer literacy. To ensure that workers are effectively trained, the definition limits employers’ reliance on computer technologies because substituting them for interaction with a trainer in real time would not properly communicate the required subject matter to the target audience.

The definition provides examples of in-person interactive instruction such as training involving the use of hypothetical scenarios and participatory learning activities. Other examples include skill-building activities, group discussion, and pre- and post-training quizzes to assess workers’ ability to apply concepts learned. Describing various participatory activities is necessary to ensure that training is truly interactive and fully engages the attention of attendees. This provision is consistent with FEHA [2 CCR § 11024(a)(2)(E)].

Subsection (d), “Supervisor”

The term “supervisor” would be defined by reference to Government Code section 12926(t), which specifies the extent of the authority a supervisor exercises in the employer’s interest (to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees), a supervisor’s responsibilities (to direct employees, adjust their grievances, or effectively to recommend that action), and the basis of a supervisor’s decisions (independent judgment).

This definition is incorporated to ensure that the proposed regulations are consistent with Labor Code section 1420(g) and FEHA [2 CCR § 11024(a)(8)], which cite the same definition.

Subsection (e), “Trainers”

This proposed definition aligns the qualifications of trainers under these regulations with the requirements of Government Code section 12950.1 and implementing regulations under FEHA [2 CCR § 11024(a)(9)]. This definition thus carries out the statutory mandate in Labor Code section 1429.5 that the property service worker sexual harassment training program take into account the requirements under FEHA. The Legislature intended for these programs to be harmonized in order to be most effective, particularly as FEHA is the primary state law governing sexual harassment training, and DFEH and the Fair Employment and Housing Council have jurisdiction over and specialized expertise in implementing this law. Further, the statutory directive to consider the FEHA requirements serves to ensure that this training program does not unnecessarily establish duplicative requirements for employers covered by both laws. Since this law (AB 1978, 2016) was enacted, subsequent legislation (SB 1343, 2018) significantly expanded the sexual harassment training requirements under FEHA, creating an even greater overlap between the two training requirements. At the time AB 1978 was enacted, state law required that employers with 50 or more employees provide training for supervisors. Now, with the recent passage of SB 1343, all employers with 5 or more employees are required to provide training to both supervisory and non-supervisory employees. For these reasons, after consulting with stakeholder members of the advisory committee, the Labor Commissioner determined that the trainer qualifications established under FEHA and its implementing regulations represent the most appropriate standards for use in this program.

In general, in order to be a qualified trainer under FEHA, an individual must have knowledge drawn from training and experience, together with the ability to communicate that knowledge, specifically:

- How to identify unlawful harassment, discrimination, and/or retaliation;
- Steps to take when harassing behavior occurs in the workplace;
- How to file a harassment complaint;
- Supervisors' obligation to report harassing, discriminatory, or retaliatory behavior of which they become aware;
- How to respond to a harassment complaint;
- The employer's obligation to conduct a workplace investigation of a harassment complaint;
- What constitutes retaliation and how to prevent it;
- Essential components of an anti-harassment policy; and
- Effects of harassment on harassed employees, co-workers, harassers and employers.

Defining “trainers” in terms of knowledge possessed is necessary to ensure that trainers are qualified to teach the appropriate subject matter.

Section 13821, Standards Regarding Timing, Documentation, and Languages for Training

Subsection (a), Frequency of Training

Specific Purpose

The purpose of this subsection is to set the required frequency of sexual harassment training.

Necessity

Proposed subsection (a) requires an employer to provide at least two hours of sexual harassment and violence prevention training to janitorial employees and their supervisors at least once every two years, including within six months of beginning employment or assuming a supervisory position. This provision is consistent with FEHA's frequency requirements [Gov. Code § 12950.1(a) and 2 CCR § 11024(b)(1)].

Labor Code section 1492.5 mandates biennial training. Two years is the minimum interval to ensure that the relevant information is not only learned, but remembered. An employer must not defer training a new employee for two years. Allowing a period of six months to accomplish the initial training strikes a balance between the urgency of the issue and providing a flexible timeline for employers. Finally, a worker who is promoted to supervisor, in light of their new authority and responsibilities, is required to refresh their training within six months of assuming their new position.

Because the property service industry has employers that often change ownership while largely maintaining the same work staff, subsection (a)(1) is necessary to enable covered successor employers with flexibility to utilize the predecessor employer's last documented date of required training for a retained employee to determine when that employee must receive their next training. This provision is necessary to avoid duplicative training and provide incentive to retain employees who have already received training. The covered successor employer must retain the same workforce for at least 120 days and maintain a retained employee's original seniority date with the predecessor employer and wage rate equal to or greater than that provided by the predecessor employer. Employers are required to provide retained employees with a copy of their sexual harassment policy and reporting procedures. This is necessary to ensure that retained employees are made aware of their new employer's sexual harassment policy and procedures and promotes a smooth transition for the workforce.

Subsection (b), Documentation of Training

Specific Purpose

The purpose of this subsection is to specify necessary documentation for sexual harassment training programs under Labor Code Part 4.2.

Necessity

Proposed subsection (b) requires janitorial services employers to maintain training records, including the names of workers trained, training dates, a sign-in sheet from each training, copies of any certificates issued, a description of the type of training provided, copies of written or recorded materials used in the training, and the names of training providers. Employers are required to keep these records for at least three years and make them available upon request to

the Labor Commissioner. This provision is consistent with FEHA [2 CCR § 11024(b)(2)] but increases the retention period from two years to three to allow greater transparency.

Documentation of required training is necessary to ensure the transparency and accountability of training programs. When an employer applies for renewal of registration, the Labor Commissioner must be able to verify compliance with the training requirement. A retention period of three years is necessary to align with the recordkeeping mandate of Labor Code section 1421.

Subsection (c), Duration of Training

Specific Purpose

The purpose of this subsection is to state the required training length and to specify a minimum duration for training segments.

Necessity

Proposed subsection (c) first reiterates the two-hour training requirement referenced in Section 13821 regarding frequency of training. The advisory committee convened by DIR considered various lengths ranging from one hour to four hours. Two hours is consistent with the duration of the supervisor training required for all industries under FEHA [Government Code § 12950.1(a)], and was determined to be the appropriate amount of time for the training required for the property service industry as well because it allows for interactive instruction and participatory learning activities. Moreover, even though a one-hour all-industry training requirement for non-supervisory employees was recently established by the Legislature (SB 1343, 2018), because the Legislature mandated a more stringent in-person training requirement for janitorial employees, the two-hour requirement allows the trainer to establish trust and a level of engagement with trainees that facilitates instruction and participatory activity. A four-hour training was considered, however, there were no quantifiable benefits to the four-hour training versus the two-hour training, and costs were considerably higher (\$2.7 million for two hours versus \$4.1 million for four-hour training). Therefore, the two-hour training length was determined to be the optimal duration and this is the duration the Labor Commissioner is proposing.

Proposed subsection (c) also specifies that the required two hours of sexual harassment training need not be consecutive but could be provided in segments of no less than one hour. Employers have the flexibility of providing either one two-hour session or two one-hour sessions. This provision is consistent with FEHA [2 CCR § 11024(b)(6)] but raises the minimum duration of segments by 30 minutes.

Because employers vary depending on business size, worksite size and location, and work schedules, some scheduling flexibility is necessary. However, for the target population, due to the complexity and sensitivity of the subject matter, segments shorter than one hour would fail to effectively train covered workers and supervisors. Sustained attention is necessary to build an understanding of complex legal concepts layer by layer. Also, for each session, a trainer must interactively engage attendees, establish sufficient trust to overcome inhibitions against discussing discrimination and sexual matters in public, and review information from any prior

sessions. More than one repetition of these steps would mean inadequate time to cover new material.

Requiring a small number of sessions also serves employers by limiting the time, effort, and expense necessary to schedule sessions and bring groups together.

Subsection (d)

Specific Purpose

The purpose of this subsection is to specify the required language and literacy level of training.

Necessity

Subsection (d) requires sexual harassment training to be conducted in the language and at the literacy level appropriate for an employee. Janitorial work is often performed by workers from immigrant communities who may lack English fluency. Employers are required to ensure that trainers adapt their materials and communication strategies to reach their targeted audience.

Section 13822, Objectives and Content

Subsections (a-b)

Specific Purpose

The purpose of subsections (a-b) is to specify subject and content matter requirements for both worker and supervisor training under Labor Code Part 4.2.

Necessity

Requiring coverage of appropriate topics is necessary to ensure that the Legislature's mandate is implemented effectively and in a manner true to its intent: to use training to reduce significantly or eliminate sexual harassment of and violence against janitorial services workers. The proposal provides guidance to ensure that the training complies with statutory and regulatory requirements and provides employers flexibility to develop training programs unique to their operations. The proposal aligns with the content-based training requirements under FEHA and promotes uniform, non-duplicative standards.

It is necessary to align the content requirements for this training with the content requirements under FEHA, as proposed in subsection (a), for several reasons. First, it carries out the statutory mandate in Labor Code section 1429.5 that the property service worker sexual harassment training program take into account the requirements under FEHA. The Legislature intended for these programs to be harmonized in order to be most effective, particularly as FEHA is the primary state law governing sexual harassment training, and DFEH and the Fair Employment and Housing Council have jurisdiction over and specialized expertise in implementing this law. Further, the statutory directive to consider the FEHA requirements serves to ensure that this training program does not unnecessarily establish duplicative requirements for employers covered by both laws. Since this law (AB 1978, 2016) was enacted, subsequent legislation (SB 1343, 2018) significantly expanded the sexual harassment training requirements under FEHA, creating an even greater overlap between the two training requirements. At the time AB 1978 was enacted, state law required that employers with 50 or more employees provide training for

supervisors. Now, with the recent passage of SB 1343, all employers with 5 or more employees are required to provide training to both supervisory and non-supervisory employees. For these reasons, after consulting with stakeholder members of the advisory committee, the Labor Commissioner determined that the all-industry content requirements established under FEHA and its implementing regulations should constitute the basic content standards for use in this program.

FEHA and the implementing regulations generally require instruction on the following: legal standards for unlawful sexual harassment, the types of conduct that constitute sexual harassment, remedies available for sexual harassment victims, strategies to prevent sexual harassment in the workplace, supervisors' obligation to report sexual harassment, discrimination, and retaliation of which they become aware, practical examples, such as factual scenarios taken from case law, news and media accounts, hypotheticals based on workplace situations and other sources, and the essential elements of an anti-harassment policy and how to utilize it. [Government Code § 12950.1 and 2 CCR § 11024(c)]

Subsection (b)

Proposed subsection (b) requires that training include local, state, and national resources for victims of sexual harassment and violence, including community-based resources such as rape crisis centers, counseling services, and mental health supports. The provision is consistent with FEHA [2 CCR § 11024(c)(2)(I)] but more specifically outlines the types of included resources. Including this information is necessary to assist workers in accessing authorities and resources that are independent of the employer. Providing alternative recourse for workers is necessary because a victim may be too fearful of retaliation to complain to the employer, or they may need additional resources not available directly from the employer.

Anticipated Benefits, Gov. Code § 11346.2(b)(1)

Implementing Part 4.2 of Labor Code Division 2 by adopting California Code of Regulations Title 8 sections 13820 through 13822 would provide benefits for both janitorial services workers and their employers. Reducing or eliminating workplace sexual harassment would enable janitorial workers to work without facing intimidation or coercion. Those who might have been driven by harassment to quit their jobs would benefit psychologically and monetarily from retaining a stable income and work schedule. Employers would benefit from better job performance by workers, reduction of business disruption, lower staff turnover, and lower liability. Reducing or eliminating workplace sexual harassment would also have broader impacts, reducing sex discrimination in the California labor market overall and promoting social equity generally.

Economic Impact Assessment, Gov. Code § 11346.2(b)(2)

Because this regulation is not a major regulation, the economic impact assessment required by subdivision (b) of Section 11346.3 is provided below.

Sources Relied Upon, Gov. Code § 11346.2(b)(3)

1. Helen Chen, Alejandra Domenzain, and Karen Andrews (May 2016), *The Perfect Storm: How Supervisors Get Away with Sexually Harassing Workers Who Work Alone at Night*, Report of the Labor and Occupational Health Program, University of California, Berkeley, available at <http://lohp.org/the-perfect-storm/>.
2. Chai R. Feldblum & Victoria A. Lipnic, EEOC, *Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf
3. Advisory Committee meetings and information from January 24, June 13, and October 11, 2017, and February 4 and 11, 2018.
4. California Economic Development Department Labor Market Info. *Quarterly Census of Employment and Wages (QCEW) Industry Detail* (2016). Accessed 11/30/2017: http://www.labormarketinfo.edd.ca.gov/qcew/CEW-Detail_NAICS.asp?MajorIndustryCode=1024&GeoCode=06000000&Year=2016&OvnCode=50&Qtr=02
5. California Economic Development Department Labor Market Info. *Size of Business Data – 2006 – present*. Accessed 11/30/2017: http://www.labormarketinfo.edd.ca.gov/LMID/Size_of_Business_Data.html
6. California Economic Development Department Labor Market Info. *Quarterly Census of Employment and Wages (QCEW) Industry Detail* (2016). Accessed 11/30/2017: http://www.labormarketinfo.edd.ca.gov/qcew/CEW-Detail_NAICS.asp?MajorIndustryCode=1024&GeoCode=06000000&Year=2016&OvnCode=50&Qtr=02
7. California Economic Development Department Labor Market Info. *OES Employment and Wages*. Accessed 11/30/2017: <http://www.labormarketinfo.edd.ca.gov/data/oes-employment-and-wages.html>
8. American Faculty Association. *Hours for Teaching and Preparation Rule of Thumb: 2-4 Hours of Prep for 1 Hour of Class*. Accessed 11/30/2017: <http://americanfacultyassociation.blogspot.com/2012/02/hours-for-teaching-and-preparation-rule.html>
9. Bureau of Labor Statistics. *Occupational Injuries/Illnesses and Fatal Injuries Profiles*. Accessed 11/30/2017: <https://data.bls.gov/gqt/InitialPage>
10. Harrell, E. *Workplace Violence, 1993-2009 National Crime Victimization survey and the Census of Fatal Occupational injuries*. U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics Special Report NCJ 233231, March 2011. Accessed 11/30/2017: <https://www.bjs.gov/content/pub/pdf/wv09.pdf>
11. Coinnews Media Group LLC. *US Inflation Calculator*. Accessed 11/30/2017: <http://www.usinflationcalculator.com/>
12. DeLisi, M., Kosloskia, A., Sweena, M., Hachmeistera, E., Moorea, M., & Drury, A. (2010). *Murder by numbers: Monetary costs imposed by a sample of homicide offenders*. *The Journal of Forensic Psychiatry & Psychology*, 21, 501-513. doi:10.1080/14789940903564388. Accessed 11/30/2017: <http://www.tandfonline.com/doi/abs/10.1080/14789940903564388>

13. WCIRB (2017). *Report on 2016 California Workers' Compensation Losses and Expenses*. Exhibit 6. Accessed 11/30/2017:
https://www.wcirb.com/sites/default/files/documents/report_on_2016_ca_wc_losses_and_expenses_complete.pdf
14. Hinkley, S. et al. (2016) *Race to the Bottom: How Low-Road Subcontracting Affects Working Conditions in California's Property Services Industry*. University of California, Berkeley, Center for Labor Research and Education.
<http://laborcenter.berkeley.edu/pdf/2016/Race-to-the-Bottom.pdf>

Reasonable Alternatives Rejected, Gov. Code § 11346.2(b)(4)

The proposal aligns with related FEHA provisions, incorporates many suggestions from stakeholders, and meets the mandate in Labor Code section 1429.5.

Alternative options were discussed in lieu of the proposed two hour training length, which is the same as DFEH's sexual harassment training for supervisors per Government Code 12950.1(a)(1) and 2 CCR § 11024(a)(11). A four-hour training was considered, however, there were no quantifiable benefits to the four-hour training versus the two-hour training, and costs were considerably higher (\$2.7 million for two hour versus \$4.1 million for four hour training). Therefore, the two-hour training length was determined to be the optimal duration.

Evidence Regarding Economic Impact on Business, Gov. Code § 11346.2(b)(5)

The proposal will not have a significant adverse economic impact on business based on analysis of the associated costs of compliance.

Labor Code section 1429.5 will immediately impact approximately 5,684 janitorial services organizations who will be mandated to provide the sexual violence and harassment prevention training to a corresponding employment of 110,189 employees. The industry employer estimate is obtained from the Employment Development Department for the particular NAICS or industry code associated with the janitorial services industry (NAICS 56172) that are privately owned.⁴

California Government Code section 11346.3 defines small businesses as businesses that are independently owned and operated, not dominant in their field of operation, and have fewer than 100 employees. The California Employment Development Department reports that 95.8% of the businesses in California's Administrative and Support Services industry (NAICS 561) have

⁴ California Economic Development Department Labor Market Info. *Quarterly Census of Employment and Wages (QCEW) Industry Detail* (2016). Accessed 11/30/2017:
http://www.labormarketinfo.edd.ca.gov/qcew/CEW-Detail_NAICS.asp?MajorIndustryCode=1024&GeoCode=06000000&Year=2016&OwnCode=50&Qtr=02

fewer than 100 employees in the third quarter 2016.⁵ It is estimated that a similar percentage of small businesses in the janitorial services industry will be impacted.

The average weekly wage for this industry is \$508. It is estimated that workers in this industry work an average 40 hours per week, so the average hourly rate is approximately \$12.70 per hour.⁶

The cost of hiring a qualified in-person trainer is estimated at \$456 based on the average hourly mean wage between a training and development specialist and an attorney⁷, noting industry standards for preparation and training time.⁸

Therefore, the cost of the 2 hour training is \$5.4 million initially and biennially (ongoing costs), or \$2.7 million annually. Initial costs for a typical small business are estimated to be \$646. Initial costs for a typical business are estimated to be \$7,850. Ongoing costs (every 2 years based on the requisite frequency of the training) are estimated to be \$646 and \$7,850 for small and typical businesses, respectively.

The creation or elimination of jobs within the state, Gov. Code § 11346.3(b)(1)(A)

Based on the above analysis regarding implementation of the training requirement, DLSE does not anticipate the creation or elimination of jobs within the state attributed to this proposal.

The creation of new businesses or the elimination of existing businesses within the state, Gov. Code § 11346.3(b)(1)(B)

Based on the above analysis regarding implementation of the training requirement, DLSE anticipates that the costs and benefits will be borne by existing businesses and will not create or eliminate businesses.

⁵ California Economic Development Department Labor Market Info. *Size of Business Data – 2006 – present*. Accessed 11/30/2017:

http://www.labormarketinfo.edd.ca.gov/LMID/Size_of_Business_Data.html

⁶ California Economic Development Department Labor Market Info. *Quarterly Census of Employment and Wages (QCEW) Industry Detail* (2016). Accessed 11/30/2017:

http://www.labormarketinfo.edd.ca.gov/qcew/CEW-Detail_NAICS.asp?MajorIndustryCode=1024&GeoCode=06000000&Year=2016&OwnCode=50&Qtr=02

⁷ California Economic Development Department Labor Market Info. *OES Employment and Wages*. Accessed 11/30/2017: <http://www.labormarketinfo.edd.ca.gov/data/oes-employment-and-wages.html>

⁸ American Faculty Association. *Hours for Teaching and Preparation Rule of Thumb: 2-4 Hours of Prep for 1 Hour of Class*. Accessed 11/30/2017:

<http://americanfacultyassociation.blogspot.com/2012/02/hours-for-teaching-and-preparation-rule.html>

**The expansion of businesses currently doing business within the state,
Gov. Code § 11346.3(b)(1)(C)**

Based on the above analysis regarding implementation of the training requirement, DLSE does not anticipate expansion of businesses currently doing business within the state attributed to this proposal.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment, Gov. Code § 11346.3(b)(1)(D)

It is anticipated that the prevention of workplace sexual harassment and violence incidents through mandated training will accrue benefits for workers, employers, and society including: reduction in injuries and health care costs for the victim, increased productivity, and reduced employee absenteeism.

A quantifiable benefit of the proposed regulation is determined by multiplying the number of lost time injuries (Days Away from Work, DAFW) that will be prevented by the proposed regulation by the societal cost of those injuries.

The number of injuries currently occurring to employees covered by the proposed regulation is calculated by multiplying the number of annual workplace violence injuries in the janitorial industry in California by the share of workplace violence cases attributed to rape/sexual assault injuries.

Per the Bureau of Labor Statistics, in 2015 in California, there were 60 DAFW workplace violence injuries in the janitorial services sector.⁹ U.S. Department of Justice reported that rape/sexual assault cases constitute about 2.3% of non-fatal workplace violence cases.¹⁰ Therefore, approximately 1.4 rape/sexual assault DAFW case per year occurs within this industry. DeLisi et al. (2010) estimated that each rape case exacts \$448,532 (in 2008 USD) or \$510,305 in current dollars in societal costs.¹¹ The annual estimated societal cost is \$704,221.

⁹ Data derived from Bureau of Labor Statistics. *Occupational Injuries/Illnesses and Fatal Injuries Profiles*. Accessed 11/30/2017: <https://data.bls.gov/gqt/InitialPage>

¹⁰ Harrell, E. *Workplace Violence, 1993-2009 National Crime Victimization survey and the Census of Fatal Occupational injuries*. U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics Special Report NCJ 233231, March 2011. Accessed 11/30/2017: <https://www.bjs.gov/content/pub/pdf/wv09.pdf>

¹¹ DeLisi, M., Kosloskia, A., Sweena, M., Hachmeistera, E., Moorea, M., & Drury, A. (2010). *Murder by numbers: Monetary costs imposed by a sample of homicide offenders*. *The Journal of Forensic Psychiatry & Psychology*, 21, 501-513. doi:10.1080/14789940903564388. Accessed 11/30/2017: <http://www.tandfonline.com/doi/abs/10.1080/14789940903564388>

To estimate employers' economic benefits of the proposal, interpreted as the prevention of incidents of sexual harassment within the janitorial industry, DIR used data reported to the California workers' compensation information system ("WCIS").¹²

For workers' compensation claims in the janitorial sector with dates of injury from 2012-2016, there was an average of 2.4 post traumatic stress disorder ("PTSD") related workers' compensation cases with an injury description indicating sexual violence/ harassment reported per year.

For the same period, the average paid cost for medical services of a PTSD workers' compensation claim in the janitorial sector was \$14,886. With indemnity, an estimated additional \$7,334 is the average paid per stress claim with permanent disability,¹³ for a total annual estimated employer cost of \$53,328.

The number of sexual violence and harassment incidents that do not result in an injury with days away from work are believed to exceed the number of reported sexual violence and harassment incidents with lost workdays by orders of magnitude and number in the tens of thousands of incidents per year for the employers covered by the proposal.¹⁴ Although this amount cannot be estimated, the prevention of these incidents should be documented as another benefit of the proposal.

Each year, based on available data, this proposal is conservatively estimated to provide \$704,221 in societal benefits and \$53,328 in employer benefits through the prevention of sexual harassment incidents in the workplace, for a total of \$757,549.

¹² WCIS uses electronic data interchange (EDI) to collect comprehensive information from claims administrators to help the Department of Industrial Relations oversee the state's workers' compensation system. Electronic transmission of first reports of injury was required beginning March 1, 2000 and electronic versions of benefit notices were mandated as of July 1, 2000. Electronic reporting of medical billing data is required for any medical service that occurs on or after Sep. 22, 2006.

¹³ Per WCIRB, the average paid indemnity cost for a permanent disability psychiatric and stress claim is \$7,334. See WCIRB (2017). *Report on 2016 California Workers' Compensation Losses and Expenses*. Exhibit 6. Accessed 11/30/2017: https://www.wcirb.com/sites/default/files/documents/report_on_2016_ca_wc_losses_and_expenses_complete.pdf

¹⁴ Hinkley, S. et al. (2016) *Race to the Bottom: How Low-Road Subcontracting Affects Working Conditions in California's Property Services Industry*. University of California, Berkeley, Center for Labor Research and Education. <http://laborcenter.berkeley.edu/pdf/2016/Race-to-the-Bottom.pdf>