

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

NOTICE OF PROPOSED RULEMAKING

Subject Matter of Regulations: Janitorial Employer Registration

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
New Sections 13810 – 13819**

NOTICE IS HEREBY GIVEN that the Labor Commissioner proposes to adopt new sections 13810 through 13819.5 in proposed Subchapter 13 of existing Chapter 6, of Division 1, of Title 8, California Code of Regulations, relating to Janitorial Employer Registration.

PROPOSED REGULATORY ACTION

The Labor Commissioner proposes to adopt regulations under new Subchapter 13 of Chapter 6 of Division 1 consisting of the following:

- Article 1. Registration Application
 - Section 13810 Application for Registration
- Article 2. Issuance of Registration; Changes in Information; Registry List
 - Section 13811 Registration Certificate
 - Section 13812 Online Registry
- Article 3. Civil Penalty
 - Section 13812.5 Civil Penalty for Contracting with Unregistered Employers
- Article 4. Denial of Registration; Suspension and Revocation
 - Section 13813 Actions on Applications and Registrations
 - Section 13814 Notice of Denial, Suspension or Revocation; Notice of Defense
 - Section 13815 Failure to File Notice of Defense; Discovery; Notice of Hearing
 - Section 13816 Conduct of Hearing; Rules of Evidence; Role of Hearing Officer
 - Section 13817 Rights of Parties at Hearing; Taking of Evidence; Rules of Procedure
 - Section 13818 Proposed Decision; Decision of Labor Commissioner; Judicial Review
- Article 5. Recordkeeping
 - Section 13819 Employees Covered by Recordkeeping Requirement

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: May 21, 2019
Time: 10:00 a.m. to 5:00 p.m., or conclusion of business

**Place: Junipero Serra State Office Building
Carmel Room, 1st Floor
107 South Broadway
Los Angeles, CA 90012**

The State Office Building and designated room are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Division of Labor Standards Enforcement at 510-285-2118 to request an accommodation, or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Labor Commissioner requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Labor Standards Enforcement. **The written comment period closes at midnight on May 20, 2019.** The Labor Commissioner will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by midnight on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period 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

Written comments may also be sent electronically (via email) using the following email address: DLSERegulations@dir.ca.gov

Written comments may also be submitted by 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.

AUTHORITY AND REFERENCE

The Labor Commissioner is undertaking this regulatory action pursuant to the authority under Labor Code sections 59, 95(a), 98.8, and 1422.

Reference is to Labor Code sections 1423, 1425, 1427, 1428, 1429, 1430, and Code of Civil Procedure section 1094.5.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Existing law establishes a registration program, effective July 1, 2018, for any employer, as defined, who enters into a contract, subcontract, or franchise agreement to provide janitorial services using a covered worker that is any individual predominantly working as a janitor, as defined, to register with the Labor Commissioner. (AB 1978; Chapter 373, Statutes of 2016) The legislation prohibits any employer from conducting business without complying with the registration requirement.

Existing law provides that the registration program is to be administered and enforced by the Labor Commissioner, who is Chief of the Division of Labor Standards Enforcement (DLSE or Division) within the Department of Industrial Relations.

Existing law requires an application for employers to register with the Labor Commissioner, information concerning the applicant employer, including such information which the Labor Commissioner requires for the administration and enforcement of the act, annual renewals of registrations, fees, a public database of janitorial employers, and authority for the agency to take adverse action on a registration.

The proposed regulation provides necessary standards for the registration program which the Labor Commissioner is required to administer. These standards include further specifying information items on an application, issuance of a registration certificate, and registration renewals. The proposal also specifies the procedure for an applicant to contest a denial of an application and for suspension and revocation procedures compliant with due process requirements which are necessary to fully administer the registration program where a subsequent action impacts the registrant's qualification for a registration certificate. The proposals are necessary for the Labor Commissioner to duly and efficiently administer the mandated registration program designed to regulate janitorial employers who provide janitorial services using covered workers, as defined, under a contract, subcontract, or franchise agreement with other entities in this state.

These proposed regulations implement, interpret, and make specific the statutory requirements of Part 4.2 of Division 2 of the Labor Code (commencing with Section 1420), hereafter referred to as "the Act" as follows:

Proposed **Subchapter 13** (of Chapter 6, Division 1, Title 8 of the California Code of Regulations) contains five (5) articles which group sections by related subject matter and further implement, establish standards, and provide requirements for application and issuance of registration to any person who is a janitorial employer performing janitorial activities in California, for any denial, revocation, or suspension of such registration, for issuance of civil penalties for contracting with an unregistered employer, and for an employer's recordkeeping obligations. The sections implement requirements or make more specific administrative procedures specified in Sections 1420 through 1434, inclusive, which relate to issuing and maintaining registrations of janitorial employers, as well as their recordkeeping requirements.

Article 1. Application Requirements

Section 13810 provides a specific procedure and content requirements for applying for registration with the Labor Commissioner, including submission of an application either online or in writing on a designated form containing specified items of information which relate to the identification of the applicant, entity information, location and contact information, and other specified items, and a payment of the \$500 fee for initial registration and subsequent annual renewal.

Article 2. Registration Certificate

Section 13811 provides the administrative process for issuance of a registration certificate, information items included on the certificate, and procedures for changes in information.

Section 13812 provides the information contained on the online registry of registered janitorial employers accessible on the Department of Industrial Relations' website and maintained by the Labor Commissioner which indicates the status of a registration, including denial, suspension, or revocation.

Article 3. Civil Penalty

Section 13812.5 provides the procedure and framework for assessing civil penalties under Labor Code section 1432(b) and provides clarification for determining initial and subsequent violations.

Article 4. Denial of Registration; Suspension and Revocation

Section 13813 provides for administrative actions which may be taken by the Labor Commissioner for addressing (1) a denial of an application for registration when the agency determines that the applicant fails to qualify for registration under the requirements in Article 1 of this subchapter, and (2) the suspension, revocation, or refusal to renew a registration by a registrant who violates or fails to comply with the Act or this subchapter applicable to registrants. The section introduces the subsequent procedures for the respective actions taken by the Labor Commissioner.

Section 13814 provides for a notice for a denial of an application or for a suspension or revocation if sought by the Labor Commissioner against an applicant or registrant and provides the requirements for providing notice of the respective administrative action by the Labor Commissioner. The section also creates a right to a hearing if appealed by the filing of a notice of

defense within the prescribed period by the applicant/registrant, provides the grounds for a notice of defense, and waiver of a right to hearing if there is a failure to file a timely notice of defense.

Section 13815 provides the procedures and rights of an applicant or registrant in the event of filing a timely notice of defense, establishes the right to a hearing, the exclusive right and method for discovery, notice of hearing to all parties at least 10 days prior to the hearing, and the right to request an interpreter.

Section 13816 provides procedures for conducting a hearing based on a denial of an application or for suspension or revocation of a registration, including the informal nature of the hearing and conferring authority to the hearing officer to control the order of presentation of evidence and otherwise rule on the evidence.

Section 13817 provides rights of parties at the hearing, as specified, including the right to be represented by counsel, cross-examination of witnesses, to rebut evidence, providing oral testimony under oath, declarations, recording of the proceeding, and amendments to any charging documents.

Section 13818 provides the procedures for preparing and issuing a decision based on the record made at the hearing, the contents of a decision, and review by the Labor Commissioner who may adopt or modify the proposed decision, or remand to the hearing officer for further proceedings. The section also provides the procedure for seeking judicial review of a decision by filing a timely petition for writ of mandate to the superior court pursuant to Code of Civil Procedure section 1094.5.

Article 5. Recordkeeping

Section 13819 provides clarification regarding the employees for whom an employer must keep records as required under Labor Code section 1421.

OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The objective of the proposed regulations is to establish procedures, standards, and criteria necessary for the Labor Commissioner to administer and enforce the janitorial employer registration program, effective July 1, 2018, in accordance with the statutory requirements provided in Part 4.2 of Division 2 (commencing with Section 1420) of the Labor Code enacted pursuant to AB 1978 (2016). This new subchapter contains provisions implementing the registration requirements for employers to apply for, and receive, a registration from the Labor Commissioner prior to providing janitorial services in this state. Establishing standardized information in the application stage and other standards and processes regarding registration will inform the public of the agency's standard procedures regarding the registration program and provide for consistent administration of the program by the agency. Workers would be able to view the online list of employers who are legally registered with DLSE and employers would benefit from the standardized process to become legally permitted to conduct business in this industry in California. Uniform procedures for submitting the required application will enable

efficient and effective issuance of registration certificates and maintenance of an online registry of janitorial employers, and providing procedures for adverse actions upon applications and registrations will further accomplish the objective of the legislation (AB 1978) to enhance the welfare and protection of janitorial workers in this state. The registration also ensures businesses are compliant with the eligibility requirements, which would have broader impacts, including addressing sexual harassment in the workplace, reducing sexual discrimination in the California labor market overall and promoting social equity generally. Thus, these standardized procedures increase transparency in business and government, and promote fairness and social equity for the workers and employers covered by this law.

DETERMINATION OF INCONSISTENCY AND/OR INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Labor Commissioner has determined that these proposed regulations are not inconsistent or incompatible with existing state statutes or other regulations. After conducting a review for any regulations that would relate to or affect this area, the Labor Commissioner has concluded that these are the only regulations which regulate the registration of janitorial employers who are subject to Part 4.2 of Division 2 of the Labor Code.

DUPLICATION OF LABOR CODE PROVISIONS

The proposed regulations repeat limited parts of various provisions of Labor Code sections 1420, 1425, 1427, 1428, 1429, 1430, and 1431. Duplication is necessary for the purpose of clarity such that the regulations represent comprehensive and consistent description of procedural requirements, standards, and criteria for administering the registration program.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Labor Commissioner has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: No fiscal impact exists because these proposed regulations create rules to carry out provisions in statute.

Cost or savings in federal funding to the state: None.

Direct cost impacts on housing: None.

Cost impacts on a representative private person or business: The proposed regulations will impact businesses who provide janitorial services under contract with another entity and who must first

register with the Labor Commissioner under the statutorily-mandated registration program. The janitorial employer may register using either an online application submitted at the agency's website or written application submitted by delivery to a specified address. Fee in the amount of \$500 (set by statute independent of these regulations) applies both for an initial registration application valid for one year and for a subsequent annual registration renewal.

Effect on Small Business: The proposed regulations will affect any small business in California which performs contract-based janitorial services employing at least one employee and one or more covered workers that is subject to regulation and who is required to register with the Labor Commissioner.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States: None.

Summary Results of the Economic Impact Analysis/Assessment

The Labor Commissioner concludes that it is (1) unlikely that the proposal will create any jobs with the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses within the State of California, except for an estimated small number of current janitorial employers who may cease operating rather than register with the Labor Commissioner, (5) unlikely that the proposal would cause the expansion of businesses currently doing business within the State of California, and (6) the proposal will enhance the safety and welfare of janitorial workers employed in California, including proper payment of wages. Accordingly, the Labor Commissioner has determined that the proposed regulatory action will not have a significant impact on business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Labor Commissioner must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Labor Commissioner's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Labor Commissioner has initially determined that no alternatives would be more effective in carrying out the purpose that underlies the proposed regulatory action, or would be at least as effective or less burdensome on the regulated public (persons who perform specified services, as defined, and businesses who use such janitorial contractors), and that would ensure full compliance with the existing statutes regarding registrations being implemented or made specific by the proposed regulations.

The Labor Commissioner invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A text of draft proposed regulations will be made available for public comment within the timeframe listed above on the Department of Industrial Relations' website (<https://www.dir.ca.gov/Rulemaking/DIRProposed.html>), and a public meeting for public comment will be held as noted.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, and proposed text of the regulations. Also included are documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Department of Industrial Relations' website at www.dir.ca.gov. To access them, click on the "Laws & Regulations" button and follow the link for "Rulemaking - Proposed Regulations." There you will find all of the agencies' current rulemaking proceedings. Scroll down the list to find the Janitorial Registration rulemaking link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Division of Labor Standards Enforcement, 2031 Howe Avenue, Suite 100, Sacramento, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday, unless the state office is closed for a state holiday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

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
E-mail: jstevens@dir.ca.gov

The telephone number of the contact person is (916) 263-1563.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person:

Laura Moskowitz, Staff Attorney
Department of Industrial Relations
Division of Labor Standards Enforcement, Legal Unit
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
E-mail: lmoskowitz@dir.ca.gov

The telephone number of the backup contact person is (415) 703-5252.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Labor Commissioner makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Department of Industrial Relations' website at www.dir.ca.gov/Rulemaking/DIRProposed.html.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the DLSE's mailing list.

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, commencing with section 13810. The text of the final regulations will also be available through the website of the Office of Administrative Law at www.oal.ca.gov.