

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 13810 THROUGH 13819, INCLUSIVE, REGULATING
JANITORIAL EMPLOYER REGISTRATION

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., ~~**language**~~) made upon the original proposed text.

Article 1. Registration Application

§ 13810. Application for Registration

To register as a janitorial employer pursuant to Part 4.2 of Division 2 of the Labor Code (commencing with section 1420), the applicant shall complete, sign, and submit an online application, along with required items and documents, at the Division of Labor Standards Enforcement (DLSE) website (https://www.dir.ca.gov/dlse/Janitorial_Providers_Contractors.html) for any initial registration or registration renewal. The Labor Commissioner may accept in-person submission to a DLSE office of the information required under this section. The applicant shall certify under penalty of perjury that the information provided on the registration form, any supplementary documents, and any other information submitted by the applicant in support of the registration are true and correct.

- (a) An applicant for a new registration or a renewal of registration shall provide items specified in Labor Code sections 1429(a)(1) through (10) and the following additional information and documents:
- (1) whether the application is for a new registration or renewal of a current registration;
 - (2) the address of the business as required in Labor Code section 1429(a)(4), including **for the applicant's main or central location, as well as any separate branch locations operated under the same legal entity,** the physical address, a mailing address, if different, and an email address for receiving electronic mail;
 - (3) information regarding the form of business if other than a corporation.
 - (i) If the business entity is a sole proprietorship, the owner shall provide his or her full legal name, including any fictitious or "doing business as" name.
 - (ii) If the business entity is a partnership or limited liability company (LLC), the same information specified in Labor Code section 1429(a)(2), applicable to corporations, shall be provided, as applicable to a partnership or LLC;
 - (4) **for each unpaid wage and hour final judgment outstanding,** the case name of each matter, court name and address, case number, date of entry of judgment, **and the** total amount of unpaid wages in the judgment that are due to a current or former employee, ~~**and any amount of unpaid wages due to the employee that remains unpaid;**~~

- (5) for each matter arising under the California Fair Employment and Housing Act that is not fully satisfied, the case name and date of any administrative settlement pursuant to Department of Fair Employment and Housing processes and the case name of each matter, court name and address, case number, and date of a final judicial decree for any final judgment for a violation of the Fair Employment and Housing Act;**
- ~~(5)~~ **(6)** whether any contribution amount required under the Unemployment Insurance Code and assessed by the Employment Development Department (EDD) against the applicant remains due and unpaid. If so, the applicant shall provide the name of the business, administrative case number, if any, date of the assessment by EDD, total amount assessed, and amount of contributions unpaid;
- ~~(6)~~ **(7)** whether any Social Security and Medicare tax contributions remain due to the Internal Revenue Service from the applicant. If so, the applicant shall identify the person or entity that assessed the delinquency and provide the administrative case number, if any, date of the delinquency notice, total amount of delinquency, and amount unpaid;
- ~~(7)~~ **(8) whether the applicant has one or more employees and if the applicant has employees,** the current number of employees the applicant uses to provide janitorial services;
- ~~(8)~~ **(9)** for each subcontractor, other independent contractor, or franchisee the applicant currently uses when providing janitorial services, the janitorial registration number (if applicable); whether the entity is a subcontractor, other independent contractor, or franchisee; and the number of individuals each identified entity uses to perform janitorial services for the applicant;
- ~~(9)~~ **(10)** for each business for whom the applicant currently provides janitorial services, the respective name, physical address, mailing address, if different, phone number, and email address of the business, and the same information regarding other businesses with whom the applicant has contracted or otherwise provided janitorial services during the 12-month period prior to the application;
- ~~(10)~~ **(11) if the applicant employs one or more employees, the applicant must submit** a valid workers' compensation insurance certificate issued to the applicant, copy of a certificate from the Director of the Department of Industrial Relations consenting to the applicant being self-insured, or copy of a valid contract with a third party to provide workers' compensation insurance and a current workers' compensation insurance certificate or certificate of self-insurance issued to that third party;
- (12) whether the applicant has registered previously or had a registration suspended or revoked under the same or another business name, and if so, the business name and registration number; and**
- (13) as part of the attestation that the sexual violence and harassment prevention training has been provided as required, the applicant must state whether the applicant provided the training or whether the training was provided by another entity, the name of the other janitorial employer or entity that provided the training, and the date(s) on which training took place. Beginning January 1, 2022, this information shall include whether a peer trainer was used to provide training to nonsupervisory covered workers and an explanation as to why a peer trainer was not used if a peer trainer did not provide the required training, as well as which qualified organization provided the peer trainer.**

- (b) The registration fee in ~~the amount specified in~~ Labor Code section 1427 shall be paid online using a credit card or ACH/EFT vendor processed through the online application portal, or by submission of a certified check, cashier's check, or money order to the "Labor Commissioner's Office" or "Division of Labor Standards Enforcement." **A service fee may be charged for vendor-processed transactions. The service fee is retained by the vendor and is not revenue to the Labor Commissioner's Office.**
- (c) A Taxpayer Identification Number may be used where a Social Security Number is required for registration purposes.

Note: Authority: Section 1422, Labor Code. Reference: Sections 1423, 1427, 1428, 1429 and 1430, Labor Code.

Article 2. Issuance of Registration; Changes in Information; Registry List

§ 13811. Registration Certificate

- (a) Upon a determination by the Labor Commissioner that the applicant has complied with all of the requirements set forth in Labor Code sections 1429 and 1430, and section 13810 of this subchapter, the Labor Commissioner shall issue **a the appropriate Registration Certificate, either for registrants with employees or registrants without employees.** The Labor Commissioner will inform the registrant of the issuance of the Registration Certificate by electronic mail and provide access to a printable Registration Certificate.
- (b) A Registration Certificate shall be valid for one year from the date of issuance.
- (c) The following information will be included on the Registration Certificate:
- (1) registrant's legal name, including any "doing business as" (dba) names;
 - (2) registrant's physical address and mailing address, if different;
 - (3) registrant's branch locations;**
 - (3) (4) whether registrant is a non-employee registrant exempt from the requirement to secure workers' compensation coverage;**
 - (5)** registration number; and
 - (4) (6)** dates of validity.
- (d) The Registration Certificate is non-transferable.
- (e) The registrant shall notify the Labor Commissioner in writing, or by update made by the registrant through the online account created during registration, within ten (10) days of any change to the contact information specified on the Registration Certificate. Following receipt of the written notice or online update from a registrant, the Labor Commissioner shall issue and provide access to a printable amended Registration Certificate, without additional cost.

Note: Authority: Section 1422, Labor Code. Reference: Sections 1423, 1425, Labor Code.

§ 13811.5 Temporary Registration Extension

The Labor Commissioner's Office may, at their discretion, issue a temporary registration that extends the validity period of a registration for a period of up to 90 days in the following circumstances:

- (a) **The applicant submitted a renewal application at least 30 days prior to the expiration date of the registration with the applicable registration fee and proof of applicable worker's compensation insurance;**
- (b) **The applicant has not failed to submit any items that the Labor Commissioner's Office has requested in order to complete processing of the renewal application;**
- (c) **The applicant is in good standing with the California Secretary of State; and**
- (d) **The renewal application processing has not been completed by the Labor Commissioner's Office.**

Note: Authority: Section 1422, Labor Code. Reference: Section 1423, Labor Code.

§ 13812. Online Registry

- (a) The public registry database of registered janitorial employers accessible at the DLSE's website, as provided in Labor Code section 1431, shall also contain the following information:
 - (1) registrant information as indicated on the Registration Certificate pursuant to subdivision (c) of section 13811; **and**
 - (2) registration status, indicating whether a person or entity is registered, was denied registration, or had registration suspended or revoked, which includes a date of action affecting the registration status; **and**
 - (3) whether a person or entity was issued a temporary registration and the dates of validity.**
- (b) The Labor Commissioner may provide a separate list of registrations that have been denied, suspended, or revoked on the DLSE's website.

Note: Authority: Section 1422, Labor Code. Reference: Sections 1423, 1425, 1431, Labor Code.

Article 3. Civil **Penalty-Penalties**

§ 13812.5. Civil Penalty for Contracting with Unregistered Employers

For purposes of assessing civil penalties under Labor Code section 1432(b):

- (a) A violation will consist of a contracting event, meaning the execution, renewal, extension, or modification of a contract or subcontract for janitorial services, with an employer who meets the definition in Labor Code section 1420(e) who lacks a current and valid registration as displayed in the online registry database at the time of the contracting event.
- (b) A first violation will be determined by the oldest contracting event, in the event that there is more than one contracting event.
- (c) A subsequent violation will be determined based on a contracting event that occurs in time after a first violation and may include either or both of the following:
 - (1) a contracting event with the same unregistered janitorial employer as the first violation.
 - (2) a contracting event with another unregistered janitorial employer occurring after the first violation.
- (d) First violations alone will be subject to a civil penalty of \$2,000.

- (e) Where a first violation is accompanied by a subsequent violation(s) in the first citation, the first violation and all subsequent violations will each be subject to a civil penalty of \$10,000.
- (f) All subsequent violations in a subsequent citation in a subsequent investigation will be subject to a civil penalty of \$25,000 for each violation.
- (g) Penalties for subsequent violations may be sought and recovered along with the penalty for the first violation or separately, so long as evidence of the first violation is provided to the trier of fact in the proceeding that determines penalties for subsequent violations, in the event that a citation is appealed.

Note: Authority: Section 1422, Labor Code. Reference: Section 1432, Labor Code.

§ 13812.6. Civil Penalty for Material Misrepresentation on Application

For purposes of assessing civil penalties under Labor Code section 1432(c), each individual material misrepresentation made in connection with an initial or renewal application shall constitute an independent violation that is subject to a \$10,000 civil penalty.

Article 4. Denial of Registration; Suspension and Revocation

§ 13813. Actions on Applications and Registrations

- (a) An applicant for registration who fails to qualify for a registration pursuant to the terms specified in Labor Code sections 1429 and 1430, or who made a material misrepresentation in connection with an application, is subject to denial of their application for registration by the Labor Commissioner.
- (b) A registrant who violates or fails to comply with the provisions of Part 4.2 of Division 2 of the Labor Code (commencing with section 1420) or this subchapter, or who made a material misrepresentation in connection with an application, is subject to denial of their renewal application or suspension or revocation of their registration.
- (c) A **person registrant** whose registration is **denied, suspended or** revoked for any period under this section may apply for a new registration upon expiration of the **denial, suspension or** revocation **period**. An application for a new or renewal registration shall be denied unless all **final** judgments and settlement agreements related to any failure to comply with laws applicable to janitorial employers **as set forth in Division 2, Part 4.2 of the Labor Code** are satisfied.

Note: Authority: Section 1422, Labor Code. Reference: Sections 1428, 1429, and 1430, Labor Code.

§ 13814. Notice of Denial, Suspension or Revocation; Notice of Defense

- (a) Denial of an application for registration, and revocation or suspension of registration, shall be upon proper notice and upon hearing, if appealed. The appeal shall be directed to the Labor Commissioner, who shall assign the matter to a hearing officer for hearing. The hearing shall be conducted according to the rules set forth in this article, and except as specifically provided herein, the provisions of Title 2, Division 3, Part 1, Chapter 5 of the

Government Code (commencing with Government code section 11500) shall not apply to these proceedings.

- (1) Proceedings to determine whether a registration shall be revoked, suspended or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which sets forth in ordinary and concise language the acts or omissions with which the registrant is charged, and shall specify the statutes or rules which the registrant is alleged to have violated.
 - (2) Proceedings to determine whether an initial or renewal application for registration shall be denied shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the applicant must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party that would authorize a denial of the application for registration.
- (b) Upon the filing of an accusation or statement of issues, the Labor Commissioner shall serve a copy thereof on the registrant or applicant in a manner provided by Government Code section 11505(c). The copy of the accusation or statement of issues shall include:
- (1) a statement that the respondent may request a hearing by filing a notice of defense within 15 days after service upon the respondent of the accusation or statement of issues, and that failure to do so will constitute a waiver of the respondent's right to a hearing; and
 - (2) a form entitled notice of defense which, when signed by or on behalf of the respondent and returned to the Labor Commissioner, will constitute a request for a hearing. Use of this form is an optional method of filing a notice of defense requesting a hearing.
- (c) Within 15 days after service of the accusation or statement of issues, the respondent may file with the Labor Commissioner a notice of defense in which the respondent may:
- (1) request a hearing;
 - (2) object to the accusation or statement of issues on the ground that it does not state acts or omissions upon which the Labor Commissioner may proceed;
 - (3) object to the form of the accusation or statement of issues on the ground that it is so indefinite or uncertain that the respondent cannot prepare a defense;
 - (4) admit the accusation or statement of issues in whole or in part; or
 - (5) present new matter by way of a defense.
- (d) Failure to file a timely notice of defense shall constitute a waiver of respondent's right to a hearing, but the Labor Commissioner, in his or her discretion, may nevertheless grant a hearing.

Note: Authority: Section 1422, Labor Code. Reference: Section 1428, Labor Code.

§ 13815. Failure to File Notice of Defense; Discovery; Notice of Hearing

- (a) The respondent shall be entitled to a hearing on the merits if the respondent files a timely notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation or statement of issues not expressly admitted.
- (b) If the respondent either fails to file a notice of defense or to appear at the hearing, the Labor Commissioner may take action based upon the respondent's express admissions or upon other evidence; declarations may be used as evidence without any notice to respondent; and, where the burden of proof is on the respondent to establish that the respondent is

entitled to the issuance or renewal of a registration, the Labor Commissioner may proceed by default without scheduling a hearing or taking evidence.

- (c) The provisions of Government Code section 11507.6 provide the exclusive right to and method of discovery for any proceeding to deny an application for registration or to revoke or suspend a registration. A party shall have 20 days from the date of the mailing of the request for discovery to provide the requested discovery to the requesting party. Any party claiming non-compliance with a discovery request made under this section may file with the hearing officer a motion to compel discovery. Any such motion shall be served upon the party from whom discovery is sought within 15 days of that party's failure or refusal to provide the discovery. The party against whom discovery is sought may file a written response to the motion within 10 days of service of the motion. The motion may be decided with or without a hearing, at the discretion of the hearing officer. The order denying the motion, or granting the motion in whole or in part, shall be in writing.
- (d) **A respondent's failure to produce records that are required to be maintained to substantiate compliance under Division 2, Part 4.2 of the Labor Code pursuant to a request by the Labor Commissioner shall be subject to the provisions set forth under Labor Code section 1174.1.**
- (e) The Labor Commissioner shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The notice of hearing shall be in substantially the same form as set forth at Government Code section 11509 and shall include notice of the right to request an interpreter for a party or witness who cannot proficiently speak or understand English.

Note: Authority: Section 1422, Labor Code. Reference: Section 1428, Labor Code.

§ 13816. Conduct of Hearing; Rules of Evidence; Role of Hearing Officer

- (a) The hearing shall be presided over by a hearing officer appointed by the Labor Commissioner. A contested hearing shall be conducted in accordance with the procedures set forth in this section and section 13817 of this subchapter.
- (b) The hearing need not be conducted according to the technical rules of evidence relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, except that the rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.
- (c) Hearsay evidence may be used to supplement or explain other evidence but shall not of itself be sufficient to support a finding. An objection is timely if made before submission of the case.
- (d) The hearing officer, in exercising sound discretion, may control the order of presentation of evidence at the hearing, keep out repetitive and cumulative evidence, and otherwise rule out evidence.

Note: Authority: Section 1422, Labor Code. Reference: Section 1428, Labor Code.

§ 13817. Rights of Parties at Hearing; Taking of Evidence; Rules of Procedure

- (a) Each party to a hearing shall have the right to appear in person and by counsel, to call and examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues regardless of whether that matter was covered in the direct examination, to impeach any witness regardless of which party first called the witness to testify, to rebut evidence, and to introduce documentary exhibits and other evidence.
- (b) Oral evidence shall be taken only on oath and affirmation.
- (c) Declarations may be admitted into evidence at a contested hearing in accordance with the procedure for admitting affidavits set forth at Government Code section 11514.
- (d) The hearing proceedings shall be electronically recorded. In lieu of or supplemental to an electronic recording, the hearing officer shall allow a party to have the proceedings transcribed by a court reporter, provided that the court reporter furnish the Labor Commissioner with a certified copy of the transcript as soon as it is prepared, and that the party requesting that the proceedings be transcribed pay the cost of all transcripts.
- (e) At any time before the matter is submitted for decision, the Labor Commissioner may file or permit the filing of an amended or supplemental accusation or statement of issues. If the amended or supplemental accusation or statement of issues presents new charges, the Labor Commissioner shall afford the respondent a reasonable opportunity to prepare a defense thereto. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation or statement of issues may be made orally during the hearing.

Note: Authority: Section 1422, Labor Code. Reference: Section 1428, Labor Code.

§ 13818. Proposed Decision; Decision of Labor Commissioner; Judicial Review

- (a) The hearing officer shall prepare a written proposed decision based on the record of the proceedings, including the hearing, which shall contain a statement of the factual and legal basis of the decision, as provided in Government Code section 11425.50. Within 45 days of the conclusion of the hearing, the hearing officer shall transmit the proposed decision to the Labor Commissioner, or his or her designee, who may: adopt the proposed decision in its entirety; modify any part of the proposed decision, including the order; or remand the case to the hearing officer for further proceedings.
- (b) Within 60 days of the conclusion of the hearing, copies of the Labor Commissioner's decision with the hearing officer's proposed decision attached thereto shall be delivered to the parties personally or sent to them by certified mail. The decision shall become effective 30 days after it is delivered or mailed to the respondent, unless the decision provides for an earlier date or a stay of execution has been granted by the Labor Commissioner. A stay of execution may be included in the decision or granted by the Labor Commissioner at any time before the decision becomes effective and may require that the respondent comply with specified conditions or terms of probation.
- (c) An applicant or registrant aggrieved by a decision issued pursuant to subdivision (a) may seek review of the decision by filing a petition for writ of mandate to the appropriate superior court pursuant to section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition is timely filed with the appropriate superior court, the decision shall be the final administrative order.

Note: Authority: Section 1422, Labor Code. Reference: Section 1428, Labor Code.

Article 5. Recordkeeping

Section 13819. Employees Covered by Recordkeeping Requirement

- (a) The term “employee” in the recordkeeping requirements in Labor Code section 1421 has the same meaning as the term “employee” in Labor Code section 1420(a)(1).
- (b) The recordkeeping provisions in Labor Code section 1421 that do not specify the type of employee for whom the employer must keep records apply to employees as the term is used in Labor Code section 1420(a)(1).
- (c) The phrase “all other covered workers” in Labor Code section 1421(f) does not refer to employees. It refers only to the other covered workers defined in Labor Code section 1420(a)(1), meaning an independent contractor or franchisee working as a janitor.**

Note: Authority: Section 1422, Labor Code. Reference: Sections 1420, 1421, Labor Code.