TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT
ADDING SUBCHAPTER 13: JANITORIAL REGISTRATION AND TRAINING
ADDING ARTICLE 6

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

FINAL STATEMENT OF REASONS AND UPDATED INFORMATIVE DIGEST

UPDATED INFORMATIVE DIGEST

The Property Service Workers Protection Act (AB 1978, Chapter 373, Statutes of 2016) established a registration program for janitorial services employers and a biennial in-person sexual violence and harassment prevention training requirement. The purpose of these regulations is to implement and interpret AB 1978.

Two bills amending AB 1978 were signed into law after the Notice of Proposed Rulemaking, Initial Statement of Reasons, and Text of Proposed Regulations were issued on April 5, 2019. These bills are Senate Bill ("SB") 83 (Chapter 24, Sections 26-32, Statutes of 2019) and Assembly Bill ("AB") 547 (Chapter 715, Statutes of 2019). The portions of each bill that affect this regulatory proposal are set forth below. [1] Further discussion of the bills and their impact on specific proposed regulatory provisions is included in the chart below that summarizes the modifications made to the proposed regulations and the reasons for those changes.

SB 83. SB 83 became effective on June 27, 2019.

AB 1978 defined "employer" to mean "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." SB 83 amended the definition of "employer" to mean "any person or entity that employs at least one covered worker or otherwise engages by contract, subcontract, or franchise agreement for the provision of janitorial services by one or more covered workers." Consistent with the definition of "covered workers" in Labor Code section 1420(e),[2] which includes employees as well as independent contractors and franchisees

[1] SB 83 and AB 547 amended some of the same provisions of the existing law at Labor Code sections 1420-1434. The provisions of SB 83 that were superseded by further amendments in AB 547 are not discussed here, as they no longer impact this rulemaking.

[2] Labor Code section 1420(a)(1) defines covered workers as a janitor, including individuals who work as employees, independent contractors, and franchisees, as the term in defined in the Service Contract Act Directory of Occupations maintained by the United States Department of Labor.

who perform janitorial work, this definition captures relationships that go beyond employer-employee and includes sub-contracting arrangements that are common in the janitorial industry.

AB 1978 required employers to provide training in sexual violence and harassment prevention to employees. SB 83 amended this provision to require that training be provided to all covered workers (meaning janitorial employees, franchisees, and independent contractors), not just employees.

SB 83 added a requirement that effective January 1, 2020, all new applications for registration and renewal of registration shall demonstrate completion of the sexual violence and harassment prevention training requirements by providing a written attestation to the Labor Commissioner that the training has been provided as required.

AB 547. AB 547, which became effective on January 1, 2020, made several additional changes to AB 1978.

AB 1978 required the Department of Industrial Relations (DIR) to convene an advisory committee to recommend the requirements for a sexual harassment prevention training program, and required the Labor Commissioner's Office (also known as the Division of Labor Standards Enforcement (DLSE)) to propose the requirements for a sexual violence and harassment prevention training requirement. (Labor Code section 1429.5.) DIR convened the advisory committee, and the Labor Commissioner's Office proposed regulations establishing the sexual violence and harassment prevention training, including the minimum required content and qualifications for trainers.

AB 547 requires that the training content for nonsupervisors shall be the training content developed by the UC Berkeley Labor Occupational Health Program (LOHP) under the direction of DIR, or as amended in the future by DIR.

AB 547 requires DIR to convene a new training advisory committee to assist in compiling a list of qualified organizations that will provide employers the qualified peer trainers that employers will be required to use to provide the required training to nonsupervisors. AB 547 also sets forth statutory criteria for the qualified organizations and the peer trainers.

Under AB 547, this janitorial-specific training may be provided in lieu of the training required under the Fair Employment and Housing Act (FEHA).

Under AB 547, DIR is required by January 1, 2021 to make available on its website the list of qualified organizations that employers must use to locate a qualified peer trainer in a particular county to provide the required nonsupervisory training. Additionally, if the website list of qualified organizations that provide peer trainers to employers indicates there is no qualified peer trainer available to provide training in a specific county, or if none of the qualified trainers are available to meet an employer's training needs, an employer may use a trainer as prescribed by the Department of Fair Employment and Housing (DFEH) to provide training to covered workers working in that specific county.

AB 547 requires employers to pay the qualified organization a fee of $65 per participant for providing the training unless an alternative payment option has been agreed to under a collective bargaining agreement.

AB 547 also added several specific documentation requirements. It requires employers to document compliance with the training requirement by completing and signing a form, developed by DLSE as part of this rulemaking, certifying that the training was conducted and that the qualified organization was paid in full, and the form shall be produced upon request of the DLSE. A covered employer shall also document compliance with the training requirement by ensuring that each participant sign in and sign out on a sign-in sheet, using printed writing and signature, at the commencement and completion of training, in addition to the regulatory documentation retention requirements.

UPDATE TO INITIAL DISCLOSURES IN NOTICE OF PROPOSED RULEMAKING

The Labor Commissioner's Office has updated the cost impact of the regulation based on the legislative changes described above:

Cost impacts on a representative private person or business: The cost of the two-hour training is estimated to be $6.7 million initially and biennially (ongoing costs). Initial and ongoing costs (every two years based on the requisite frequency of the training) for a typical business are estimated to be $28,102.

Effect on small business: The cost of the two-hour training is estimated to be $3.9 million initially and biennially (ongoing costs). Initial and ongoing costs (every two years based on the requisite frequency of the training) for a small business are estimated to be $724.

UPDATE TO INITIAL STATEMENT OF REASONS

Pursuant to Government Code Section 11346.9(d), the Labor Commissioner's Office incorporates the Initial Statement of Reasons prepared in this rulemaking. Consistent with Government Code section 11346.2(b)(3), which requires the submission of documents the agency relied upon "in proposing the adoption, amendment, or repeal of a regulation," certain documents listed as relied upon in the Initial Statement of Reasons were not included in the rulemaking file submitted to the Office of Administrative Law because these documents were relied upon for other purposes, not to support the necessity of the regulation.

Shortly after the Notice of Proposed Rulemaking was published in the Notice Register on April 5, 2019, the agency learned that the address where the public hearing was scheduled to take place in Los Angeles on May 20, 2019 was listed incorrectly. (The incorrect address was a previous location of the state office building close to where the hearing was actually going to take place.) The agency issued a Notice of Correction explaining the error and providing the correct address on April 15, 2019, updated its website to list the correct address on April 15, 2019, and published the Notice of Correction in the Notice Register on April 19, 2019. In addition, on the day of the hearing, the agency attempted to post the Notice of Correction at the address that was listed incorrectly in the original Notice, but that address (107 South Broadway, Los Angeles) no longer

exists as it has been replaced with a different building that has a different address. Agency staff advised the personnel staffing the security desk of that building regarding the hearing and the correct address, so that members of the public who wished to attend the hearing could be directed to the correct address.

Following the agency's review and consideration of comments provided during the 45-day comment period and at the public hearing, and following subsequent legislative amendments to the law that is the subject of these regulations, the agency issued a Notice of Modifications to Text of Proposed Regulations. These modifications were intended to incorporate changes as a result of the public comments and as a result of changes to the law made by SB 83 and AB 547. A 15-day period for comment was provided pursuant to Government Code section 11346.8(c). This comment period was extended for another 15 days in order to allow for public comment on a training completion form (DLSE 800) that AB 547 required DLSE to develop, which is incorporated by reference.

Additionally, following the first 15-day public comment period on the proposed modifications to the text of the regulations, the agency issued a Second Notice of Modifications to Text of Proposed Regulations in order to propose a change as a result of the comments received during the 15-day public comment period. A 15-day period for comment was provided pursuant to Government Code section 11347.1. The following sections were revised substantively as set forth below.

Modifications Resulting from the 45-day Public Comment Period, Public Hearing, and Legislative Changes (April 5, 2019 – May 20, 2019, Public Hearing May 20, 2019)

Section/ Subsection	Modifications	Justification
13820(c)	Subsection (c) is modified to substitute "nonsupervisory covered workers and supervisors of nonsupervisory covered workers" for "janitorial employee or supervisor" and to substitute "trainee" for "employee."	These changes are necessary to reflect that AB 547 amended the statute (Labor Code 1429.5) to require training for all nonsupervisory covered workers and their supervisors. The word trainee is used in some places because it is a more concise term for both the nonsupervisory covered workers and the supervisors who are being trained, and because "employee" is no longer the statutory term for individuals who must be trained.
13820(e)	Subsection (e) is modified to specify who may be a trainer for purposes of providing training to the supervisors of nonsupervisory covered workers, as compared to new subsection (f), which specifies who can be a trainer for	This modification is necessary because AB 547 created a new trainer requirement for nonsupervisory covered workers. There is now a separate subsection to describe the requirements for trainers of nonsupervisory workers, while the

Section/ Subsection	Modifications	Justification
	purposes of providing training to nonsupervisory covered workers.	training requirements for supervisors remain the same as in the proposed regulation.
13820(f)	New subsection (f) is proposed to specify who may be a trainer for purposes of providing training to nonsupervisory covered workers, namely a qualified peer trainer provided by a qualified organization listed on the website of the Department of Industrial Relations (DIR). New proposed subsection (f) also specifies that until the website list of qualified organizations is made available, the same trainers defined in subsection (e) may be used to provide training to nonsupervisors. Further, this new subsection specifies that the trainers defined in subsection (e) may also be used if there is no qualified peer trainer available, as set forth in Labor Code section 1429.5(k).	Under AB 547, the DIR director will convene a training advisory committee to assist in compiling a list of qualified organizations that employers will be required to use to provide the required training to nonsupervisors. Qualified organizations will provide qualified peer trainers that employers will use to deliver the required training to nonsupervisory covered workers. The list of qualified organizations that employers will use to locate a qualified peer trainer will be made available on the Department's website by January 1, 2021. This new subsection is necessary to implement the new trainer requirements established in AB 547 for nonsupervisory janitorial workers.
13821(a)	Subsection (a) is modified to require that an employer shall "ensure that at least two hours of training are provided" instead of requiring that an employer shall "provide at least two hours of training." In addition, as modified, this provision requires that the burden of establishing that the training was provided as required shall be on the employer, including where an employer "ensures" that the training is provided by another entity or janitorial employer. Subsection (a) is also modified to substitute "nonsupervisory covered workers" for "janitorial employees."	These modifications are necessary to implement changes made by SB 83 and AB 547. First, AB 547 amended the training requirement in Labor Code section 1429.5(a) to require training of nonsupervisory covered workers and supervisors of nonsupervisory covered workers. Pursuant to the definition of "covered workers" in Labor Code section 1420(a), this includes employees as well as independent contractors and franchisees who perform janitorial work. Therefore, the term "nonsupervisory covered workers" must be substituted for "janitorial employees." Additionally, AB 547 established a peer trainer requirement in which employers technically will not be

Section/ Subsection	Modifications	Justification
		providing the training to nonsupervisory workers, but will be responsible for using a qualified organization to locate a qualified peer trainer to provide the training. Therefore, it is more accurate to state that an employer shall "ensure" that the training is provided instead of stating that the employer shall "provide" the training (though the employer will continue to be responsible for providing training to supervisors using trainers that meet the qualifications provided in regulations implementing Government Code 12950.1). Finally, SB 83 amended the definition of "employer" in Labor Code section 1420(e) to mean "any person or entity that employs at least one covered worker or otherwise engages by contract, subcontract, or franchise agreement for the provision of janitorial services by one or more covered workers." This broad definition captures relationships that go beyond employer-employee, and includes sub-contracting arrangements that are common in the janitorial industry. As a result, there may be a chain of contracts or agreements among several "janitorial employers" for purposes of cleaning any particular location, and the training obligation for each employer would run to the workers and their supervisors engaged in providing the janitorial services. For example, there could be a large janitorial contractor that bids on a cleaning contract, and then they subcontract out to another janitorial contractor, who may also contract out to a third contractor. In such a

Section/ Subsection	Modifications	Justification
		circumstance, there may be three registered "employers," each of whom is required to provide sexual harassment training to the nonsupervisory janitors and their supervisors. These workers could be providing janitorial services for all three employers simultaneously because the work is being done at the location covered by each of the three applicable contracts. The intent of the regulation is not to require that a worker receive the training separately (i.e., three times) by each employer in order to fulfill the training requirement. Rather, the intent of the regulation is to require that the training be conducted at least once every two years or within six months of a worker assuming a position. Therefore, for this reason as well, the Labor Commissioner's Office (LCO) is proposing that a janitorial employer must "ensure" that the training is provided as required, rather than requiring the employer to "provide" the training itself. Janitorial employers can comply by ensuring that training is completed by any employer in the chain, as long as the training is provided in the required timeframe for each covered worker. The employer will need to maintain the required documentation regardless of who provides the training, and will need to certify to the LCO as part of a registration or renewal application that the training has been provided, by whom, and the dates the training was provided. Further, the regulation clarifies that each employer has the burden of establishing that the training was provided as required, even where another entity or janitorial provided

Section/ Subsection	Modifications	Justification
		the training. In other words, the employer cannot simply direct the LCO to another entity that provided training in order to meet its training obligation. This is distinct from the assurance in Labor Code section 1429.5(k)(2), as amended by AB 547, that an employer "shall be deemed to be in compliance with the requirement to use a peer trainer to provide the required training if they contracted with a qualified organization that was listed on the department's website at the time of the training."
13821(a)(1)	Subsection (a)(1) is modified to substitute "nonsupervisory covered worker's" for "employee's."	This change is necessary to reflect that AB 547 amended the statute to require training for all nonsupervisory covered workers. Therefore, the requirements in this provision apply to all nonsupervisory covered workers, not just to employees.
13821(b)	Subsection (b) pertaining to documentation of training is modified in four ways. First, to state that an employer shall maintain a record of the training "that has been" provided instead of the training that "it has" provided. Second, "nonsupervisory covered workers" is substituted for "janitorial employees." Third, this provision is modified to require that employers maintain the sign-in sheet containing the printed written name as well as the signature of each participant both at the commencement and at the completion of the training. Fourth, this provision is modified to require that employers maintain a new signed form (DLSE 800) certifying that the training was provided and that the qualified organization that provided the peer trainer to train nonsupervisory covered workers was paid in full for each participant.	The first change is necessary to reflect that under AB 547, a qualified organization will provide a peer trainer to conduct the training for nonsupervisory workers rather than the employer providing the training. Additionally, an employer may ensure that the training is provided by another janitorial employer, e.g., a sub-contractor or a franchisee, in which case the employer would be required to maintain a record of the training that has been provided even if the employer did not arrange for the training to be provided itself. The second change is necessary to reflect that AB 547 amended the statute to require training for all nonsupervisory covered workers. The third change is necessary because AB 547 requires that employers create and maintain a sign-in sheet containing the names and signatures as specified, whereas the

Section/ Subsection	Modifications	Justification
		proposed regulation just required maintenance of a sign-in sheet. Although this language is duplicative of the statute, Labor Code section 1429.5(e), having all of the documentation requirements in one regulatory provision will promote compliance, rather than a disjointed approach with some requirements in the statute and some in the regulation, where employers may overlook the additional statutory requirements that are not reiterated in the regulation. The fourth change is necessary to implement a new requirement in AB 547 that will go into effect after the list of qualified organizations is made available to employers, and they use the qualified organization to locate a peer trainer to provide the training for nonsupervisory covered workers. AB 547 required the Division of Labor Standards Enforcement to develop this form in order to ensure that the employer pays the qualified organization $65 for each participant trained by the peer trainer. The new form is DLSE 800, which was also proposed for public comment.
13821(b)(1)	New subsection (b)(1) was proposed to require the employer to make available to a trainee, upon request, a copy of the training materials presented to the trainee and a copy of any certificate of attendance or completion issued to a trainee, if applicable.	The LCO agreed with comments stating that training materials that were provided to the trainees should be provided upon request so that they may continue to learn from these materials and refer back to them as needed. In addition, if a certificate of attendance or completion was created for the trainee, the trainee should be given a copy. Allowing workers to obtain copies of these items is consistent with the training requirement in general, and furthers access to resources. A secondary effect is to reduce fraud in the program

Section/ Subsection	Modifications	Justification
		because workers will be able to verify if the employer has created a false document to indicate that training occurred when it did not, as several commenters raised concerns that employers require workers to sign a completion form even though training had not been provided.
13821(d)	Subsection (d) is modified to substitute "nonsupervisory covered worker" for "janitorial employee."	This change is necessary to reflect that AB 547 amended the statute to require training for all nonsupervisory covered workers. Therefore, the requirements in this provision apply to all nonsupervisory covered workers, not just to employees.
13822(a)	Subsection (a) is modified in three ways. First, it is modified to require an employer to "ensure that the content of the training" is compliant, rather than to "provide training." Second, this provision is modified to substitute "nonsupervisory covered workers" for "janitorial employees." Third, this provision is modified to specify that the content of the training shall be the training content developed by the Labor Occupational Health Program (LOHP) under the direction of the DIR director, or as amended in the future by the DIR director.	The first change is necessary to reflect both that AB 547 requires an employer to use an outside entity to provide the training to nonsupervisory covered workers, rather than providing the training itself, and to reflect what was stated above with respect to Section 13821(a), in that there may be several "employers" that have a training obligation for the same workers, and an employer may comply by ensuring that the training is provided rather than providing it separately. The second change is necessary to reflect that AB 547 amended the statute to require training for all nonsupervisory covered workers. Therefore, the requirements in this provision apply to all nonsupervisory covered workers, not just to employees. The third modification is necessary to implement Labor Code section 1429.5(d), as amended by AB 547, which requires the Division of Labor Standards Enforcement to require employers subject to the training requirement to use the LOHP training content.

Section/ Subsection	Modifications	Justification
13822(b)	Subsection (b) is modified in two ways. First, to specify that the LOHP training will be available on the Department's website, and that the LOHP training and any amendments to the training content made in the future by the Department's director must include, at a minimum, the content-based training requirements in the Fair Employment and Housing Act, Government Code section 12950.1. Subsection (b) is further modified to add "hotlines and helplines for survivors" and "agencies and organizations" to whom sexual violence and harassment may be reported. The words "should," "unlawful," and "alleged" have been removed.	The first set of changes are necessary to implement the requirement in AB 547 that employers use the LOHP training content, which must be easily accessible in order for employers to use it. Additionally, this change implements the requirement in AB 547 that the training content for the janitorial industry meet the requirements for the all-industry training under Government Code section 12950.1, such that this training may be provided in lieu of the training required by section 12950.1, as specified by AB 547 in Labor Code section 1429.5(a). With respect to the second set of changes, the LCO agreed with a comment that the proposed changes to this subsection will be more helpful for employers and workers. With these changes, this provision will provide fuller information to workers and victims of sexual violence or harassment about possible courses of action. In addition, using more neutral language regarding sexual violence and harassment conveys a more appropriate tone for victims and survivors. The word "unlawful" has been removed to reflect that a legal determination has not been made regarding the legality of any particular activity, and workers do not need to know whether it is unlawful before they report it. Similarly, "alleged" has been removed because it is a legal term that may make some victims or survivors feel that they may not be believed when they make a report, and may therefore discourage them from reporting.

Modifications Resulting from First 15-day Public Comment Period (November 25, 2019 – December 10, 2019)

Section/Subsection	Modifications	Justification
13820(f)	Subsection (f) is modified to specify that after the website list of qualified organizations is posted, consistent with Labor Code section 1429.5(k), if the website list of qualified organizations that provide peer trainers to employers required to provide training to nonsupervisors indicates there is no qualified peer trainer available to provide training in a specific county, or if none of the qualified trainers are available to meet an employer's training needs, an employer may use a trainer as described in subdivision (e) of this section to provide training to nonsupervisory covered workers working in that specific county.	The LCO agreed with comments expressing concern that the proposed modified regulation was not as clear as, or could be interpreted differently than, the statute. The regulation was not intended to set forth a different standard for "trainers" than the standards set forth in Labor Code 1429.5(k). It is necessary to reiterate the statutory language for purposes of clarity and to make compliance requirements clearer.

Summary and Response to Written and Oral Comments[3] Resulting from the 45-Day Public Comment Period:

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Section 13820 – Definitions		
a. Section 13820(a) Definition of Covered Worker		
Sandra Diaz, Service Employees International Union, United Service Workers West ("SEIU USWW")	Make the following change to the regulatory text in the definition of "covered worker" in section 13820(a): <u>"Employee" has the same meaning as "covered worker" as defined in Labor Code section 1420(a) and includes full time, part time, and temporary janitorial workers.</u>	The LCO declines to adopt the proposed modification because it is inconsistent with the statute. "Covered worker" is defined in Labor Code section 1420(a) to mean a janitor, and it includes employees, independent contractors, and franchisees. It is clear from this definition that an employee is only one subset

[3] Comments made at the public hearing on May 20, 2019 are designated as "PHT" (Public Hearing Transcript), followed by the pages and lines of the public hearing transcript where the comments are located.

		of "covered worker." Therefore, the definition of "employee" cannot have the same meaning as "covered worker."
b. Section 13820(c) Definition of Training		
Eric Christiansen, Facility Masters	Online training can be an effective method of training employees in the janitorial service industry. Many employees in this industry are very familiar with mobile devices and would be able to easily access online training courses. Those less familiar with computers or who personally lack on line access could be trained using computers in the office or on mobile devices provided to them. The state of California requires all employers with 5 or more employees provide prevention training (SB 1343). Online training is an approved method of training under SB 1343. Online training may not be perfect, but it is a perfectly acceptable method of training for all other employers with more than 5 employees in the state. There may be advantages to in-person training, but there are certainly disadvantages as well. In our small company we have 55 employees working at more than 35 locations, in three counties, working both day and night, weekdays and weekends. It will not be possible to gather all employees in one location for the in-person training. Our small company will be required to hold multiple training sessions, in different locations, and at various times in order to reach all of our employees with the required in-person training. Moreover, as we provide the ongoing training (training new employees within 6 months and retraining existing employees every two years), our company will have to hold in-person training sessions at least twice a year (again possibly in multiple sessions, in different locations, at various times). Given these immense and the expense of providing in-person training, online training should be allowed as an acceptable option for janitorial service companies.	The LCO declines to make the proposed modification to allow employers to provide online training because the statute requires in-person sexual harassment and violence prevention training (Labor Code section 1429.5). As such, the LCO cannot provide an online training option for this training requirement.
Eric Christiansen,	The cost for in-person training will be far higher than the estimated initial cost of $646 and ongoing cost (every 2 years) of $646.	Since the Notice was issued, AB 547 changed the payment structure for

Facility Masters	Our administrative office is very small and cannot accommodate such training. Our company will therefore not only have the expense of hiring a trainer, but we will be required to rent meeting facilities to host the trainings. The cost of hiring an in-person trainer to provide multiple training sessions throughout the year along with the cost of renting meeting facilities is going to increase our company's costs far above the estimated figures shown in the NOTICE OF PROPOSED RULEMAKING.	nonsupervisory training, which will be $65 per participant. These updated costs are included in this Final Statement of Reasons and Updated Informative Digest.
Chris Waldheim, J's Maintenance (PHT p. 15, lines 18-25, p. 16, lines 1-6)	The second thing I wanted to bring up is the in-person requirement. It's a burden for us, and it's a burden for some of our employees. Truthfully, once they leave our work, you know, some of them have to go back and take care of their children or they have another job, they may have a long commute, so requiring them to come back in for some kind of group training isn't very practical. So I'd like to have some kind of -- I guess some kind of explanation, if you have more than 5 people in a location, more than 10 people in a single site, then let's do training there, but I have locations where I have two employees, and they're more than 100 miles from the next employees. So the idea of trying to combine them into a group setting would be pretty impractical.	The LCO declines to modify the in-person requirement because the statute requires in-person sexual harassment and violence prevention training (Labor Code section 1429.5). As such, the LCO cannot provide another option for this training requirement.
John N. Gill, Township Building Services, Inc.	We are opposed to the proposed rules changes due to the following: There are effective online, ecommerce, training programs which document compliance for everyone. The elimination of these ecommerce programs are unfair and very problematic for employers.	The LCO declines to make the proposed modification to allow employers to provide online training because the statute requires in-person sexual harassment training (Labor Code section 1429.5). As such, the LCO cannot provide an online training option for this training requirement. Employers are free, however, to use ecommerce tools to assist them to satisfy the documentation requirements under these regulations.

Jo-Lynn Ruedas, Jerry's Services, Inc.	I do agree with "Training and Registration." I do understand the urgency and need for it. However, I Oppose the Cost/Fees. We being a small Mom and Pop Janitorial Company are being hit left and right with additional Cost/Fee's/Increases for providing a Service to our Clients. If we increase our cost and pass it onto our Clients, we may lose our Business. I understand this training is Mandatory if a Company has 4 or more Employee's. Your Initial costs for a typical small business are estimated to be $646. Then you have the yearly Mandatory DIR Fee of $500.00, so for every 2 years we are to pay a total of $1,146.00. Huge Corporations may be able to afford the cost, us small Business's cannot. My Recommendations would be to have Online Classes, at a reduced cost/fee. Traveling for these classes would be costly. Not to mention the time, gas and bridge tolls. I haven't seen any classes being offered locally. We must travel a distance to even the DIR in Oakland which is not convenient. In all honesty at the rate we are going with all the Mandatory Fee's/Insurance/Worker's Comp required Licenses, purchasing products to run our Business we will not Survive another year or 2.	The LCO appreciates the comment. Labor Code section 1429.5 mandates that all covered employers provide in-person training. The LCO cannot provide an option such as an online course that is less stringent than what the statute requires.
Alejandra Domenzain, UC Berkeley School of Public Health Labor Occupational Health Program	We support the clarification that training must be in person and interactive, and that video or e-learning methods cannot solely fulfill the requirements. LOHP has over 40 years of experience designing and conducting training for low-wage workers that is based on the principles for effective adult education. The current requirements for in-person, interactive training will result in training that is effective in reaching the learning objectives, especially considering the sensitive subject matter.	The LCO appreciates the comment in support of the definition of training.
Alejandra Domenzain, UC Berkeley School of Public Health Labor Occupational Health Program	We support the inclusion of examples of interactive instruction, such as quizzes, small group discussions, hypothetical scenarios, and other exercises that allow workers to apply new information to their own experiences and environment. Research on adult learning supports the importance of relevance and building on participants' own experiences as factors that result in greater learning, and including such examples may help trainers understand what is meant by "interactive."	The LCO appreciates the comment in support of the definition of training.
Jennifer A. Reisch, Equal	The Regulations Should Make Clear That the Required Training Must Be Conducted In Person.	The LCO appreciates the comment and agrees that the

Rights Advocates; Esta Soler, Futures Without Violence	The proposed regulations define "Training" as "in-person, interactive instruction provided to a janitorial employee or supervisor," and provide guidance about and examples of interactive instruction. (Proposed section 13820(c).) This language mirrors parts of existing regulations that implement the sexual harassment training requirement under the Fair Employment and Housing Act ("FEHA"), codified at Government Code section 12950.1. However, Labor Code section 1429.5 specifically requires "in-person sexual violence and harassment prevention training" to be provided to workers and employers covered by the law. This term is not superfluous and we believe the regulations should specifically define "in-person" to avoid confusion and encourage employers to adopt best training practices. By borrowing heavily from the language of Government Code section 12950.1 regulations that authorize "e-learning," "webinar[s]," and other forms of training not involving in-person instruction, but not providing any specific guidance on what "in-person" means, the proposed regulations heighten the risk of confusion and misinterpretation by employers. To clarify that the sexual harassment and prevention training program required under AB 1978 must be delivered in person, we would propose the following language be added or incorporated into the Definitions section of the Training regulations: "In-person" training means that a trainer is physically present with the employees being trained to deliver information, lead discussions, and respond to questions. Based on our experience developing, facilitating and conducting trainings, and designing curricula specifically related to sexual violence, sexual harassment, and health and safety for adult low-wage workers, we believe that a trainer must be physically present in order to adequately connect with participants, provide support and resources to participants engaging with the content, and facilitate peer learning opportunities. Core adult learning principles require engagement and the opportunity to challenge and question, allowing learners to incorporate new ideas and skills. In-person, interactive	statute specifically requires "in-person sexual violence and harassment prevention training." Given the plain language of the statute, the LCO declines to adopt another definition of "in-person" in the regulations.

	training improves retention of information and deepens learning. Moreover, in-person training has been required in parallel California training standards, including Cal/OSHA standards addressing violence prevention in healthcare settings, blood borne pathogens, and aerosol transmissible diseases.	
Sandra Diaz, SEIU USWW (PHT p. 44, lines 16-24)	When you deliver training, why it's important to do it in person, is because for far too long, workers are supposed to be trained on safety on so many things. The nature of the industry is you go and you sign something and you leave, or they go and give you a presentation that nobody understands and you leave. And there's no real attempt on prevention on assessing and understanding of the issue and having workers have tool to change culture and prevent it.	The LCO appreciates the comment. The proposal requires in-person training, as required by the statute.
Sandra Diaz, SEIU USWW; Elena Dineen, Maintenance Cooperation Trust Fund	Make the following change to the regulatory text in the definition of "training" in section 13820(c): <u>The interactive instruction will be based on survivor-centered and trauma-informed principles and techniques. For purposes of providing training to covered workers as required by Labor Code Section 1429.5, an employer may develop his or her own training module or may use the training developed by the Labor Occupational Health Program (LOHP) at the direction of the Department of Labor Standards Enforcement and the advisory committee. This LOHP developed training satisfies the training requirements under this section. The Department of Labor Standards Enforcement shall make the LOHP sexual violence and harassment prevention training for property service workers available for use by employers.</u>	The LCO declines to adopt the suggested modification for reasons discussed in detail in response to the comments regarding the training content being survivor-centered and trauma-informed below, and because the requested reference to the LOHP training has been effectively codified by AB 547, which requires that the LOHP training be the training content for nonsupervisors (Labor Code 1429.5(d), as amended by AB 547).
c. Section 13820(e) Definition of Trainers		
H. Gonzales, Janitor (PHT p. 32, lines 1-5)	I suggest that trainings should be given by people like myself that understand and are certified and are sensible to how to interact with people that have -- that have gone through trauma, especially sexual harassment.	The LCO appreciates the comment. The proposal provides that the training be conducted in-person, as required by the statute. After the hearing was held on the initial proposal, AB 547 was signed into law. Among other things, this law specifies that training for nonsupervisory janitorial workers must be provided

		by a qualified peer trainer. By implementing AB 547 through these regulations, the LCO is effectively adopting this comment.
E. Lopez, Janitor (PHT p. 32, lines 10-25; p. 33, lines 1-25; p. 34, lines 1-3)	I've been working in the janitorial industry for 29 years. Today, I'm here before you to ask for your support regarding Law AB 1978. Working the place that I've now been working for the last 19 years, I've also been harassed there by a lead person as well as by a coworker…. That's why I'm here today fighting and supporting against all those and in favor of those who have been abused sexually in the workplace. The pain and trauma that one suffers is great to the point that you really don't want to continue to live. I'm preparing myself -- training myself to be a teacher -- a certified teacher and to train people to not be abused and to prevent the harassment at work because there's so much abuse, whether they touch you or they harass you or they -- all these traumas is too much for someone. I've been to the trainings, but all they do in the last years is they just have you sign something, but they don't really provide you with the proper training against sexual harassment. Today, I'm telling all of you that it's better for one of us to do the trainings, that we do this one-on-one training to prevent the harassment in the workplace and to provide this training in the workplace.	The LCO appreciates the comment. The proposal provides that the training be conducted in-person, as required by the statute. After the hearing was held on the initial proposal, AB 547 was signed into law. Among other things, this law specifies that training for nonsupervisory janitorial workers must be provided by a qualified peer trainer. By implementing AB 547 through these regulations, the LCO is effectively adopting this comment.
K. Velasquez, Janitor (PHT p. 36, lines 17-25; p. 37, lines 1-7)	I'm here this morning to support AB 1978, and I support all of the changes that my union has carried out. It's very important for us as teachers -- as teachers that we are preparing ourselves to do so, to personally go to our coworkers and can personally explain to them what is happening in each of the buildings and to be able to help them because -- in case there are problems -- help them with the problems because there are a lot of problems going on, and, many times, they just don't talk about it because they fear repercussions. And it's very important that we talk to them as coworkers because they will have less fear of talking to us because we are coworkers.	The LCO appreciates the comment. The proposal provides that the training be conducted in-person, as required by the statute. After the hearing was held on the initial proposal, AB 547 was signed into law. Among other things, this law specifies that training for nonsupervisory janitorial workers must be provided by a qualified peer trainer. By implementing AB 547 through these regulations, the LCO is effectively adopting this comment.
J. Equihoa, Janitor	I come here so that you support us with law AB 1978. We are getting trained -- we're training to help our	The LCO appreciates the comment. The proposal

(PHT p. 37, lines 11-20)	coworkers because of the sexual harassment, and we're often harassed a lot in the workplace. I hope that you support us, that you don't take away these regulations, that you allow us to train our coworkers, and we just want to move forward, and hopefully you will support us.	provides that the training be conducted in-person, as required by the statute. After the hearing was held on the initial proposal, AB 547 was signed into law. Among other things, this law specifies that training for nonsupervisory janitorial workers must be provided by a qualified peer trainer. By implementing AB 547 through these regulations, the LCO is effectively adopting this comment.
P. Cueves, Janitor (PHT p. 27, lines 5-15)	I've been working for 19 years in the janitorial industry. I support this Law 1978, and … I've been preparing myself to provide -- to provide these trainings on one-on-one, person-to-person because we are janitors and we know what we suffer -- we know what we go through when we are alone in the buildings. And so I ask you that you support us in what we are asking for, please.	The LCO appreciates the comment. The proposal provides that the training be conducted in-person, as required by the statute. After the hearing was held on the initial proposal, AB 547 was signed into law. Among other things, this law specifies that training for nonsupervisory janitorial workers must be provided by a qualified peer trainer. By implementing AB 547 through these regulations, the LCO is effectively adopting this comment.
Sandra Diaz, SEIU USWW (PHT p. 45, lines 6-25; p. 46, lines 1-8)	So many of the workers here were silent for -- some even decades, and it took another peer instructor to go to them and say, "Hey. You can speak it safe. You won't be judged. I hear you. It's your decision what you do with this, but know that you have rights" versus -- just a couple weeks ago, we had an HR person say to a worker that broke her silence and said, "I'm being sexually assaulted at work." "Oh, I'll hear your report, but I thought women liked to be checked out. You probably" -- "it probably wasn't a big problem." And I share this because this happens all the time. And so unless we're able to address culture change, unless we're able to address the empowerment of workers that live this day in and day out and that are actually	The LCO appreciates the comment. The proposal provides that the training be conducted in-person, as required by the statute. After the hearing was held on the initial proposal, AB 547 was signed into law. Among other things, this law specifies that training for nonsupervisory janitorial workers must be provided by a qualified peer trainer. By implementing AB 547

	sensitive to the issue, can empathize over something deeply invested to change it, the circumstances are going to stay the same. The training in the books is the training in the books…. But, I guess, the heart of it is: Could we change culture? And in that in-person is critical, trauma-informed, and, moving forward, the vision is to have the workers, as you see here, be able to institute these changes in the industry themselves.	through these regulations, the LCO is effectively adopting this comment.
Sandra Henriquez, California Coalition Against Sexual Assault (PHT p. 24, lines 12-25; p.25, lines 1-12)	[T]hese janitors are the ones that we think know best, that they can deliver that [training] because, as you know and we know -- because we work -- this is the realm of the organization that I represent and direct, we know that a lot of times businesses are going to take -- they're going to do the minimum that they can; right? They're going to check the box. That doesn't mean that they're going to do what is necessary to prevent this from occurring. Right? To prevent it. We can help these women after. Why should we have to; right? We have do what it takes to prevent it. And you are all in a position to ensure that that happens, to help ensure that what we put out there doesn't cause any more damage and to recognize, I think that this group of women that all have come out in force today are the experts. So, for example, when they're up there training and somebody says, "Well, that doesn't really happen," they know how it happens because many of them have experienced, you know, how it happens, when it happens, how it's set up, you know, the abuse that takes place. So they're not going to -- nobody's going to be able to gouge them or pull something over on them because they know through their lived experiences and through the lived experiences of their coworkers.	The LCO appreciates the comment. The proposal provides that the training be conducted in-person, as required by the statute. After the hearing was held on the initial proposal, AB 547 was signed into law. Among other things, this law specifies that training for nonsupervisory janitorial workers must be provided by a qualified peer trainer. By implementing AB 547 through these regulations, the LCO is effectively adopting this comment.
Section 13821 - Standards Regarding Timing, Documentation, and Languages for Training		
a. Section 13821(a) Frequency/Duration of Training		
Ben Ebbink, California Chamber of Commerce Building Owners and Managers Association California Business	These proposed sections require employers to provide at least “two hours” of training to janitorial employees and their supervisors. The FEHA sexual harassment training requirements, as recently amended by SB 1343 (2018) and currently set to go into effect in 2020, require covered employers to provide two hours of sexual harassment prevention training to supervisors, but only “one hour” of such training to non-supervisory employees.	The LCO declines to adopt the proposed modification to require a one-hour training for nonsupervisory janitorial workers as is currently required under FEHA's all-industry sexual harassment training for nonsupervisory workers. Labor Code section 1429.5 set forth a detailed process

Properties Association North Orange County Chamber (hereinafter "California Chamber of Commerce")	Therefore, these proposed sections are inconsistent with Government Code section 12950.1 and will result in janitorial employers being required to comply with two separate and inconsistent training requirements. For example, a janitorial employer may have both janitorial and non-janitorial employees (such as administrative employees). Under this proposal, they would be required to provide two hours of training to non-supervisory janitorial employees, but only one hour of training to non-janitorial employees. The Initial Statement of Reasons contends that because Labor Code Section 1429.5 requires "in-person" training, two hours of training for non-supervisory employees is needed to allow "the trainer to establish trust and a level of engagement with trainees that facilitates instruction and participatory activity." However, Labor Code Section 1429.5 does not require training to meet these arbitrary criteria. Moreover, FEHA merely requires that sexual harassment be "effective." The Initial Statement of Reasons presents no evidence why one hour of training is insufficient to meet the statutory requirements, similar to the requirement applicable to all other non-supervisory employees in California. These sections should be amended to require only one-hour of training for non-supervisory employees.	for the creation of these sexual violence and harassment prevention regulations, including convening an advisory committee to recommend the appropriate training standards. The two-hour training requirement was developed through advisory committee discussion and consensus. After the public comment period concluded for the initial proposal, AB 547 was signed into law. One of the provisions of this law specifies that the training required in the janitorial industry "shall be in lieu of, and not in addition to, the requirements for training under Government Code section 12950.1, as long as the training ... meets or exceeds the requirements for training under Section 12950.1 of the Government Code." (Amended Labor Code section 1429.5(a).) The Department of Industrial Relations will ensure that the required training content meets or exceeds the training requirements under Government Code section 12950.1. Therefore, an employer covered by both laws need not comply with two separate and different training requirements and need only provide the training required in these regulations.

Chris Waldheim, J's Maintenance (PHT p. 18, lines 2-15)	The Department of Fair Employment and Housing (DFEH) has a rule going into effect in January of 2020 requiring training every two years as well. It's one hour for employees. It's two hours for supervisors. We've been doing the two-hour-every-two-year training for our supervisors, managers, and anyone that's dealing with other people over the last -- I don't know -- probably 15 years, so that part's now changed. I just want a little -- I'd like to understand, you know, which rule is going to be in the lead there. Is it going to be that DFEH rule, or is it going to be this new DIR rule? Are they somehow combined?	The two-hour minimum duration of the janitorial training requirement was developed through advisory committee discussion and consensus. After the public comment period concluded for the initial proposal, AB 547 was signed into law. One of the provisions of this law specifies that the training required in the janitorial industry "shall be in lieu of, and not in addition to, the requirements for training under Government Code section 12950.1, as long as the training ... meets or exceeds the requirements for training under Section 12950.1 of the Government Code." (Amended Labor Code section 1429.5(a).) The Department of Industrial Relations will ensure that the required training content meets or exceeds the training requirements under Government Code section 12950.1. Therefore, an employer covered by both laws need not comply with two separate and different training requirements and need only provide the training required in these regulations.
b. Section 13821(a)(1) Frequency/Covered Successor Employer		
Ben Ebbink, California Chamber of Commerce	This proposed section provides that a "covered successor employer" that retains the same workforce for 120 days, maintains employees' original seniority dates, and provides wage rates equal to or greater than that provided by the predecessor employer may use the	The LCO declines to adopt the proposed modification because this provision for covered successor employers provides easily

	predecessor employer's last documented date of required training to determine when employees must be retrained. While we appreciate the Division's desire to provide flexibility and avoid duplicative training to covered successor employers, the Division has no authority to impose substantive labor standards on successor employers, even under the guise of a "voluntary" requirement. Imposing substantive worker retention requirements upon employers is the purview of the Legislature, not an administrative agency during rulemaking, as demonstrated by numerous legislative measures over the years which proposed or enacted worker retention requirements or incentives for certain industries. Seeking to compel janitorial employers to (1) retain employees for 120 days, (2) maintain their original seniority date, and (3) maintain their wage rates under the predecessor employer in exchange for flexibility regarding retraining obligations is unauthorized and inappropriate. For these reasons, this section should be amended to eliminate substantive worker retentions standards as a condition to receiving common sense flexibility under the statute.	identifiable benchmarks for employees who are retained by successor employers to avoid duplicative trainings. This subsection also provides the requirements for covered successor employers to fulfill the training to facilitate compliance and enforcement. It is within the LCO's authority to promulgate this provision pursuant to Labor Code section 1429.5(a), which requires LCO to establish all aspects of the biennial training requirement. LCO recognizes practices in this industry through previous enforcement of wage and hour laws and further confirmed during the pre-rulemaking process from industry representatives (employers and employees) which involve frequent transfers in ownership with a new employer often retaining the same work staff performing the same services as before. In addition to the statements discussing this subsection in the Initial Statement of Reasons, establishment of a standard to apply the biennial training requirement in subsection (a) of this section under a successor employer scenario is necessary to maintain an efficient process that achieves the objectives for regular required training for

		covered workers where there is a transfer of business ownership that retains the same trained workforce. The criteria fundamentally requires retention of covered workers for a period of time to justify fair treatment of a retained workforce. The developed criteria appropriately ensures that there be an effective benefit for the successor employer as well as for the retained and properly trained workforce, and thus, promote the underlying objective of achieving a well-trained workers in the regulated industry. The notion of a transition retention period was conceptually modeled on the Displaced Janitor Opportunity Act ("DJOA"; see Labor Code section 1060 et seq.) which provides a 60-day "transition employment period" that more broadly requires retention of employees and subcontractors where there is a change in a services contract (janitorial or building maintenance) resulting in a new successor service contract for performance of essentially the same services as performed in the previous services contract. Unlike the DJOA that more broadly *requires continued*

		employment during the retention period (Labor Code section 1061) to avoid liability for violations under Section 1062, the retention period in this subsection has a different and more limited purpose for determining the timing of the minimum two-year training requirement. Using workforce retention as a standard here recognizes recent trainings that were conducted for the same workforce within the required biennial period for training. It was determined that 120 days was a more reasonable standard for purposes of providing a qualification to the ordinary employer-specific required training stated in subdivision (a) of this section that effectively applies the date of the last training by the predecessor employer for purposes of determining future training. A shorter retention period would primarily provide a benefit for successor employers while minimizing that supervisors and covered workers underwent previous required training based on their prior status with the predecessor employer, i.e., the covered successor employer immediately has trained supervisors and covered workers in their workforce. A successor employer who chooses to utilize this subsection will

		likely avoid duplicative trainings and incur less costs for training than what is incurred under the general training standard where any workers of the predecessor employer that are simply hired by the new employer would be required to be trained by the new employer under the general requirements in subsection (a). This subsection utilizes the 120-day retention period of the workforce by the successor employer as a categorical benchmark for applying two additional criteria which are also needed to address employer compliance for the *timing of individualized training* of supervisors or nonsupervisory covered workers in order to justify a successor employer's reliance on an individualized worker's last date of training by the predecessor employer: where the successor employer also maintains the supervisor's or nonsupervisory covered worker's *original seniority dates* with the predecessor employer and *wage rates* equal to or greater than that provided by the predecessor employer. The LCO determined that seniority and wage rate protections fundamentally reflect employment stability and

		are benchmarks for maintenance of hard-earned progress for those performing supervisory and nonsupervisory covered work under a single employer in an industry which has historically struggled with affording basic worker protections The LCO determined that these two additional criteria (seniority and wage rates) align with the successor employer's full *acquisition* to their benefit of a workforce of individuals who have been trained within, but not more than, two years prior to the date of the ownership change. The benefit to the employer allowing a successor employer to use the previous training date of covered workers as if there is no change in business ownership is balanced by requiring maintenance of the two basic protections of original seniority date and at least the same wage rate received under the predecessor employer for the retained workforce for at least 120 days. Rather than provide for multiple or differing time frames for application of each of these two additional criteria making compliance determinations more complex for industry participants and enforcement, the criteria are incorporated into the 120-

		day retention period so that application of the subsection for the stated scenario can be more easily determined by employers, covered employees, and enforcement staff. Rather than imposing or compelling substantive worker retention requirements upon all employers in this industry, these criteria that consist of easily identifiable and determinable benchmarks that are limited in application to apply only when a covered successor employer seeks to use the last documented date of training by the predecessor employer for a retained workforce.
Chris Waldheim, J's Maintenance (PHT p. 16, lines 8-25; p. 17, lines 1-2)	There's some language in there about a successor company and getting the records from them about sexual harassment training that had happened. I think it makes sense to add some penalty to the company that lost a contract. If you expect them to pass that information along -- because many of the employees won't keep those records. They won't have a record of something they signed saying they completed it. So for me, as a new employer, it would be virtually impossible. I would either force the previous company to provide those records in the transition or face a penalty, or I would just do away with that hope. And when they come to a new company, we're responsible for the rules exactly as it says, you know, within the six months, and we continue to follow the rules. Personally, that would be my preference because trying to chase down paperwork from companies that lost the account is really hard. Most of them just – you know, they don't want anything to do with you, and they don't want to help you.	The LCO appreciates the comment, but declines to adopt the proposed modification, which would require regulation of business relationships between predecessor and successor employers.
c. Section 13821(b) Documentation of Training		

Alejandra Domenzain, UC Berkeley School of Public Health Labor Occupational Health Program	We support the requirement that the employer maintain a record of training, including a copy of all written and audio-visual materials that comprise the training. This is a good source of information regarding the content and methods of employer training.	The LCO appreciates the comment in support of the documentation requirement.
Ben Ebbink, California Chamber of Commerce	This proposed section requires a janitorial employer to maintain training records for three years. This proposal differs from the requirement applicable to other employers under FEHA, which requires such records to be maintained for two years. (Title 2, C.C.R. § 11024(b)(2)). This proposed section is inconsistent with FEHA and would require janitorial employers to comply with two separate and differing record retention requirements, likely resulting in confusion. For these reasons, this section should be amended to be consistent with FEHA and require training records to be maintained for two years.	The LCO declines to adopt the proposed modification. There is a statutory requirement that employers must keep accurate records for three years. (Labor Code section 1421.) The requirement to maintain training records for three years is consistent with section 1421 and other recordkeeping laws enforced by the LCO, including those under Labor Code sections 226 and 1174, and Section 6 or 7 of the applicable order of the Industrial Welfare Commission. This alignment will better allow the LCO to enforce the law.
Elena Dineen, Maintenance Cooperation Trust Fund (also in PHT p. 9, lines 11-20 and p. 10, lines 22-25 through p. 11, lines 1-17)	Add language to Section 13821(b): Documentation of Training: To track compliance and protect against employer fraud, an employer shall maintain a record of the training it has provided as required under this section, including, but not limited to, the names of the janitorial employees and supervisors trained, the date of training, the sign-in sheet, <u>the name and phone numbers of training attendees, the start and end time that each attendee attended the training</u>, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, and the name of the training provider. The employer shall maintain these records for a minimum of three years and shall make them	The LCO appreciates the concern regarding anti-fraud protections to increase compliance. AB 547 was signed into law after the public comment period concluded for the initial proposal. One of the provisions of this law requires employers to document compliance with the training requirement by ensuring that each participant sign in and sign out on a sign-in sheet, using printed writing and

	available, upon request, to the Labor Commissioner. The employer shall make available to employees upon request copies of all training materials and record of training, including, but not limited to the date of training, the sign-in sheet, a copy of all certificates of attendance or completion issues, the type of training, a copy of all written or recorded materials that comprise the training, and the name of the training provider. Workers often report that rather than provide substantive, mandatory trainings, employers often hand out a flyer or provide a quick cursory review of the issue. Workers are asked to sign a piece of paper that they have attended the training, although in reality, they have received little to no instruction. To protect against this behavior, employers should be required to keep more detailed records of the training, including the start and end times each participant attended the training, and make this information available to the Labor Commissioner and workers in order to hold employers accountable.	signature, at the commencement and completion of training, in addition to any regulatory documentation retention requirements adopted by the Labor Commissioner (Labor Code section 1429.5(e)). Therefore, the LCO is requiring employers to maintain a copy of this sign-in sheet, effectively adopting this proposed modification. With respect to the suggestion that workers should be provided a copy of the training materials upon request, the LCO agrees that training materials such as the employer's policy, the resources and the definitions of sexual harassment should be made available upon request by a worker, so that they may continue to learn from these materials. The LCO also agrees that a worker should be able to request another copy of any certificate of attendance or completion that was issued to the worker. The regulations were modified to reflect this revision. The LCO views this change as consistent with the training requirement in general, and a secondary effect is to reduce fraud in the program. With respect to the remaining types of documents, these documents

		are already required to be produced to the LCO and it is unclear why a worker should obtain copies of all of these items, such as a copy of all certificates of attendance or completion that were issued regarding other workers. The LCO declines to require employers to provide copies of all of these materials to workers upon request.
Sandra Diaz, SEIU USWW	Add the following to the regulatory text in section 13821(b): <u>The employer shall make available to employees upon request copies of all training materials and record of training, including, but not limited to the date of training, the sign-in sheet, a copy of all certificates of attendance or completion issues, the type of training, a copy of all written or recorded materials that comprise the training, and the name of the training provider.</u>	As described in the response to the comment above, the LCO considered this proposed modification and decided to adopt it in part. With respect to the suggestion that workers should be provided a copy of the training materials upon request, the LCO agrees that training materials such as the employer's policy, the resources and the definitions of sexual harassment should be made available upon request by a worker, so that they may continue to learn from these materials. The regulation was modified to reflect this revision. The LCO views this change as consistent with the training requirement in general, and a secondary effect is to reduce fraud in the program. With respect to the remaining types of documents, these documents are already required to be produced to the LCO and it is unclear why a worker

		should obtain copies of all of these items, such as a copy of all certificates of attendance or completion that were issued regarding other workers. The LCO declines to require employers to provide copies of these materials to workers upon request.
M. Nieto, Janitor (PHT p. 14, lines 3-5)	I'm also asking you that … the employees be provided with a copy of the information that they are receiving.	The LCO accepted the comment that copies of the training material should be given to the workers upon request and modified the regulation.
d. Section 13821(c) Duration of Training		
Ben Ebbink, California Chamber of Commerce	This proposed section provides that "the minimum duration of a training segment shall be no less than one (1) hour." Again, this proposal differs from the requirement applicable to other employers under FEHA, which provides for a minimum duration of training segments of 30 minutes. (Title 2, C.C.R. § 11024(b)(6)). This proposed section is inconsistent with FEHA and would require janitorial employers to comply with two separate and differing training requirements, likely resulting in confusion. For these reasons, this section should be amended to be consistent with FEHA and permit a minimum duration of training segments of 30 minutes.	The LCO declines to adopt the proposed modification to allow a training segment to be 30 minutes. Labor Code section 1429.5 set forth a detailed process for the creation of these sexual violence and harassment prevention regulations, including convening an advisory committee to recommend the appropriate training standards. The minimum duration of training requirement was developed through advisory committee discussion and consensus. The LCO also believes that a minimum training segment of one hour is more practical and cost-efficient given the requirement that this training be done in person by a qualified trainer. After the public comment period concluded for the

		initial proposal, AB 547 was signed into law. One of the provisions of this law specifies that the training required in the janitorial industry "shall be in lieu of, and not in addition to, the requirements for training under Government Code section 12950.1, as long as the training ... meets or exceeds the requirements for training under Section 12950.1 of the Government Code." (Amended Labor Code section 1429.5(a).) The Department of Industrial Relations will ensure that the required training content meets or exceeds the training requirements under Government Code section 12950.1. Therefore, an employer covered by both laws need not comply with two separate and different training requirements and need only provide the training required in these regulations.
Elena Dineen, Maintenance Cooperation Trust Fund (also in PHT p. 9, lines 21-25; p. 10, lines 1-5)	The training program should provide employers with flexibility but also must be practical to absorption and retention. We realize the agencies need to provide large employers with flexibility, however, this flexibility must not render the requirement ineffective. If employers are being allowed to divide up training time, the second half of the training must be provided within 15 consecutive work days. It is imperative that the agency develop regulations that protect the integrity of human absorption and retention of the information so that this legislative reform actually have the desired effect.	The LCO appreciates the comment regarding proper retention of the training information. The LCO declines to adopt the proposed modification, however, because this minimum duration requirement was developed through advisory committee discussion and consensus. Labor Code section 1429.5 set forth a detailed process for the creation of these sexual violence and

		harassment prevention regulations, including convening an advisory committee to recommend the appropriate training standards.
e. Section 13821(d) Language and Literacy Level for Training		
Elena Dineen, Maintenance Cooperation Trust Fund (also in PHT p. 11, lines 18-25; p. 12, lines 1-2)	The regulations should require employers provide training materials in the language and literacy understood by janitorial employees and supervisors. Add language to Section 13821(d): Training and all training materials required by this section shall be provided in the language and literacy level understood by the janitorial employee and supervisor. The regulations must make clear that all materials must be provided in the language and literacy level understood by the employee and the supervisor. There should be no doubt that it is not sufficient to only provide the in-person training in that language of the employee but also to translate all materials related to the training. Without this regulation, contractors wishing to circumvent the spirit of the proposed will provide materials in English only, and prevent employees who do not speak English from understanding the material.	The LCO declines to adopt the proposed modification because the definition of "training" in regulatory provision Section 13820(c) incorporates all training materials.
Sandra Diaz, SEIU USWW	Make the following change in the regulatory text in Section 13821(d): (d) Training and the materials required by this section shall be provided in the language and literacy level understood by the janitorial employee and supervisor.	The LCO declines to adopt the proposed modification because the definition of "training" in regulatory provision Section 13820(c) incorporates all training materials.
Alejandra Domenzain, UC Berkeley Labor Occupational Health Program	All training materials used during the training or given out to workers should be in the language and literacy level that is understood by workers and supervisors as well.	The definition of "training" in regulatory provision Section 13820(c) incorporates all materials and handouts referenced during the training, which are required to be in the language and literacy level that is understood by

		workers and supervisors. Therefore, no modification is needed in response to this comment.
Chris Waldheim, J's Maintenance (PHT p. 17, lines 3-25; p. 18, line 1)	I completely agree about the materials and the training being in the language of our employees. You know, we have produced Spanish newsletters. We've done all of our training. We do all of our employment applications. We do everything in the language of our employees. All of the employees that work in our business are bilingual, including me. We make sure that we can communicate with them clearly and effectively. When you bring up the question of literacy, I'm just a little worried how we're supposed to measure that. It's impossible for me to know the literacy level, and if somebody can't read, I have no problem with that, and we're happy to share everything verbally with them. The issue is if somebody has illiteracy level and we're expected to give them printed materials, then what is that going to look like? And who decides what that looks like? Does the DIR decide? Do you guys create that material so that we can hand it to someone who can't read and it's all pictographs? I'd like a little bit more thought to go into that wording, specifically, about literacy. Knowing that, you know, at the end of the day, that's absolutely what we want, is for them to understand these rules.	The LCO declines to modify the proposed regulation. The language and literacy requirement was developed through advisory committee discussion and consensus. The literacy requirement is not intended to require employers to ascertain literacy level of their employees, but is intended to ensure that delivery of the training is easily understood by the trainees. Moreover, AB 547, which was signed into law after the initial comment period, will require that training for nonsupervisory workers be conducted by a qualified peer trainer who is fluent in the language or languages that the workers understand and it will require that the Labor Occupational Health Program content be used, which encompasses a variety of literacy levels and multiple formats, such as video, pictograph, and written material (Labor Code section 1429.5(g)(3) & 1429.5(d), as amended by AB 547.)
Ben Ebbink, California Chamber of Commerce	This proposed section requires training to be "provided in the language and literacy level understood by the janitorial employee and supervisor." These requirements would be extremely burdensome and difficult, if not impossible, to comply with.	The LCO declines to eliminate the proposed language and literacy level requirements. These requirements were developed through advisory committee discussion and

	Due to the diverse nature of California's workforce, employers have workers who speak a number of different languages. Other provisions of law requiring information to be provided to employees specify that the information must be provided in a language understood by a certain percentage or number of the employees or specify the specific language in which the information must be provided, both of which are more reasonable standards. Even more problematic is the requirement to provide training at the "literacy level" understood by the employee. It is unclear how an employer is expected to ascertain this information without violating the privacy of their employees. Are they expected to ask the employees their literacy level? Are they expected to ask their employees to take a literacy test? Moreover, literacy levels can vary widely and are essentially individual in nature. Under this requirement, an employer could theoretically be required to provide separate training to each employee since each employee could have a completely unique and different literacy level. This requirement is unworkable and impossible to comply with. For these reasons, the language and literacy level requirements of this proposed section should be eliminated.	consensus. The literacy requirement is not intended to require employers to ascertain literacy level of their employees, but is intended to ensure that delivery of the training is easily understood by the trainees. Moreover, AB 547, which was signed into law after the initial comment period, will require that training for nonsupervisory workers be conducted by a qualified peer trainer who is fluent in the language or languages that the workers understand and it will require that the Labor Occupational Health Program content be used, which encompasses a variety of literacy levels and multiple formats, such as video, pictograph, and written material (Labor Code section 1429.5(g)(3) & 1429.5(d), as amended by AB 547.)
M. Nieto, Janitor (PHT p. 14, lines 3-5)	I'm also asking you that the material be in the language of the worker….	The LCO appreciates the comment. The regulatory proposal already requires that training material be provided in the language of the worker.
H. Gonzales, Janitor (PHT p. 31, line 25; p. 32, line 1)	It is necessary that workers receive the training and materials in their language.	The LCO appreciates the comment. The proposal requires employers to provide the training in a language understood by the workers being trained. The definition of "training" includes all instruction.
Section 13822 Objectives and Content of Training		
a. Section 13822		

Jennifer A. Reisch, Equal Rights Advocates; Esta Soler, Futures Without Violence; Alejandra Domenzain, UC Berkeley Labor Occupational Health Program; Nicole Marquez, Worksafe; Nayantara Mehta, National Employment Law Project; Jesse Newmark, Oakland Centro Legal de la Raza; Lisa Bixby, Legal Aid at Work; Sandra Diaz, SEIU USWW (also in PHT p. 44, line 25; p. 45, lines 1-5); Elena Dineen, Maintenance Cooperation Trust Fund (also in PHT p. 10, lines 6-21 and PHT p. 12 lines 3-12); Sandra Henriquez,	Numerous commenters, including several members of the advisory committee convened by DIR to recommend requirements for a sexual harassment prevention training program per Labor Code section 1429.5 and additional members of the Ya Basta! Coalition that supported passage of AB 1978 (the law that established the janitorial registration and training program), submitted comments explaining that because AB 1978 aims to prevent sexual violence and harassment in an industry that employs a large number of highly vulnerable workers who have experienced sexual violence and harassment at disproportionately high rates, it is essential that the regulations mandate that the required training include survivor-centered content and trauma-informed principles. According to commenters, this approach realizes the impact of trauma on the lives of survivors of sexual violence, recognizes the signs and symptoms of trauma, and responds by fully acknowledging and integrating knowledge about trauma into the policies, procedures, and practices. Importantly, this approach helps to avoid re-traumatizing or re-victimizing attendees of the training. Commenters specifically suggested adding language to Section 13822 specifying that the required training must include the trauma-informed principles and survivor-centered content. In addition, commenters noted that the training content that was developed by the UC Berkeley Labor Occupational Health Program (LHOP) in conjunction with members of the advisory committee and the DIR director incorporates a trauma-informed approach that is specific to workers in the janitorial industry. These commenters therefore also requested that the LOHP training be specified in the regulations as the model training that satisfies the training requirements and that the LOHP training be made available for employers to use.	The LCO appreciates the comment and the concern regarding the targeted workforce for the sexual violence and harassment prevention training being vulnerable to, and having a disproportionate incidence of, sexual violence and harassment, which could have an emotionally-triggering impact on training participants. After the public comment period concluded for the initial proposal, AB 547 was signed into law. One of the provisions of this law mandates that the LCO require covered employers to provide the training using content developed by the Labor Occupational Health Program (LHOP) under the direction of the DIR director (Labor Code section 1429.5(d)). Several commenters had urged the LCO to require use of the LOHP training because it incorporates a trauma-informed approach. Therefore, by implementing this provision in conformance with AB 547 (Training Regulation Section 13822(a)), the LCO is adopting a trauma-informed approach for this training requirement, and is effectively adopting this comment as well as the comments requesting that employers use the LOHP training content. Further, in Section 13822(b), the LCO

California Coalition Against Sexual Assault (also in PHT p. 20, lines 5-25; p. 21, lines 1-20)		is making the LOHP training available online for employers to use.
Chris Waldheim, J's Maintenance (PHT p. 15, lines 5-17)	[W]e recognize that the Department of Labor Standards Enforcement collaborated with the UC Berkley Labor and Occupational Health Program to create a training we believe satisfies the requirements of this section and included a trauma-informed approach already to this program. So we would ask that the regulations reference that training so that it's clear that that training is available to employers who are providing this training to their employees.	As noted above, after the public comment period concluded for the initial proposal, AB 547 was signed into law. One of the provisions of this law mandates that the LCO require covered employers to provide the training using content developed by LHOP under the DIR director (Labor Code section 1429.5(d)). Therefore, by implementing this provision in conformance with AB 547 (Training Regulation Section 13822(a)), the LCO is adopting a trauma-informed approach for this training requirement, and is effectively adopting this comment. Further, in Section 13822(b), the LCO is making the LOHP training available online for employers to use.
b. Section 13822(b)		
Jennifer A. Reisch, Equal Rights Advocates; Esta Soler, Futures Without Violence	We suggest modifying subdivision (b) of Section 13822 as follows: (b) In addition, all training shall include identification of local, state, and national resources for victims of ~~unlawful~~ sexual violence and harassment, including *hotlines and helplines for survivors*, community-based resources such as rape crisis centers, counseling services and mental health supports, and *agencies or organizations* to whom they ~~should~~ *may* report ~~any alleged~~ sexual violence and harassment.	The LCO agrees that the clarifications in this comment will be more useful and appropriate for employers and workers, and adopted the proposed modifications.
Additional General Comments Not Related to a Specific Regulatory Provision		

M. Nieto, Janitor (PHT p. 13, lines 23-25; p. 14, lines 1-2)	I've been a nonunion worker for more than 10 years. And I'm here so that stronger laws are passed regarding -- and for the employers to be trained regarding sexual harassment and the trauma that it creates, such as states of anxiety, depression, and not wanting to go to work.	The LCO appreciates the comment. The proposed regulations are intended to clarify and implement the statutory training requirement. To the extent the commenter is addressing statutory changes that would require additional training for employers rather than supervisory and nonsupervisory employees, the authority to make those changes lies with the Legislature and is beyond the scope of this regulatory proposal.
G. Cortez, Janitor (PHT p. 26, lines 19-23)	I've been working as a janitor for 20 years. I've come here to say that's enough. I support the changes that my union is providing because we need this, trainings and that the trauma be reported -- the traumas be reported.	The LCO appreciates the comment. The regulations implement the statutory training requirement, which includes information on where to report incidents of sexual violence and harassment.
G. Hernandez, Janitor (PHT p. 12, lines 23-25; p. 13, lines 1-16)	I've been a janitor for seven years. In the seven years that I've worked as a janitor, I have not been aware of what my rights have been or could be. During those seven years, I've gone through a lot of things, and that is why I'm here, and I'm here to tell all of you what has happened to me, and that's why I want this new law that's been approved. I would like this law to be stronger and for all of us to know what our rights are and that all the employers need to know that we have rights and that they need to provide us with trainings because whenever we get a job, all they have us do is just sign some paperwork, but we really don't know what our rights are in that employment. I'm a janitor, and I have no benefits whatsoever, nor is it because I'm a nonunion worker. I hope that this new law will be stronger for us and that we have more rights like everyone else and that we get better training. That way, we know more about what our rights are.	The LCO appreciates the comment. The proposal is intended to help workers and their supervisors learn about rights and obligations under the law.

Chris Waldheim, J's Maintenance (PHT p. 14, lines 13-25; p. 15, lines 1-4; p. 18, lines 17-22)	J's Maintenance … [is] a self-performing janitorial contractor. We've been performing janitorial services for the past 50 years. We were one of the first companies . . . to register for ours -- to the registration system. So we spend a lot of time training our employees, training our supervisors, you know, making sure that we're following all the rules, so I just have a couple of pretty quick points, I think. I think we as janitorial -- at least the companies that are part of Patchco, the companies that are organized and doing things properly, we're very concerned about the safety of our employees. None of us want to have anything happen. I mean, they're all part of our team. We're a family-owned company, so they're part of our big family, and we've treated them, you know, that way for 50 years. We give them benefits. We give them all kinds of things that aren't required by the law.... [W]e, you know, take the care of our employees very seriously. We appreciate everything they've done. I've been working in this industry for, God, 42 years, so I love the industry. I love our employees. I love taking care of them, and I appreciate you-all being out here today to help create some procedures to keep them safe.	The LCO appreciates the comment.
Sandra Henriquez, California Coalition Against Sexual Assault (PHT p. 19, lines 8-25; p. 20, lines 1-4)	[W]e're a statewide organization that also does national work, but our mission is to end sexual violence and to work with those on providing resources, individuals and organizations and industries, to help prevent this from occurring in the first place. Our organization represents the statewide safety net, which consists of 84 programs serving every geographic county in the state, as well as other culturally specific and industry-specific groups that are also working to eliminate that. We work to help build the capacity and provide them resources, advocate on their behalf, et cetera. In my role there as CEO, one of the things I know is that we have between 34,000 and 37,000 victims of sexual violence that come forward every year for assistance. There are many that don't ever come for assistance. There are many of those that never report a crime that happened in the first place. And so our organization is very much in favor of the work that's happening here and some of the recommendations around the implementation and training requirements for AB 1978.	The LCO appreciates the comment.

Sandra Henriquez, California Coalition Against Sexual Assault (PHT p. 21, lines 23-25; p. 22 through p. 24, lines 1-6)	[Y]ou know, I want to speak to the issue of burden a little bit because I understand, and I really can appreciate the gentleman's comment about burden -- the burden on employers, et cetera, and especially if it's a small business. And, at the same time, I want to speak to the issue of burden on the victims of sexual abuse. They will live with a lifetime of burden of having experienced any such thing, including all the way up to rape, which we know -- and if you've seen that documentary, Rape on the Night Shift, you know that many of these employees -- not just women, but men as well but primarily women -- many who we know are recently immigrated or are immigrants into this country who may not feel comfortable coming forward -- regardless of documentation status but including documentation status -- but we know that they may not feel comfortable because they may not trust -- they may not know their rights. They may not know what constitutes misconduct and sexual harassment. And so because of those things, that population is highly at risk. This is one of the things that we see, is that there are certain populations that are going to be more at risk for sexual violence because of who they are, because of immigration status, because of lack of education of traditional formal education, because of language barriers, because of sexual orientation or ability. So there are many reasons why survivors wouldn't come forward and why they may be specifically targeted. And one of the things that we've learned in the years that my organization has worked with this industry on this issue and survivors that have come to us even before we even reached out to the industry to tell us what was happening to them when they were working in isolation, the job alone creates a risk in that they work in isolation. They work where it doesn't matter if they yell or scream, nobody is going to come to aide because they're in isolation, and sometimes intentionally placed in locations in buildings by, many times, their own supervisors so they can be preyed upon. So we're talking about a population that is even more at risk than what statistics say about women, which is generally between one and three women that are at risk to experience sexual abuse at some point in their lives. This population is at a greater risk because of the work that they do, because of when they work, where they work, because of the power	The LCO appreciates the comment.

	dynamic that exists with their supervisors. So while I appreciate that there is a burden, I have to say that the burden that these survivors live with for the rest of their lives, I think that that's -- we have to take that into consideration, and we have to weigh that in terms of when we look at the financial burden because not only -- it has life-altering ramifications for these survivors, and I will say financial burden as well because a number of them cannot return to work.	
C. Corona, Janitor (PHT p. 27, lines 19-25; p. 28, lines 1-10)	I've been in the janitorial industry for five years. I support what the union is providing in regards to the law, AB 1978. I am a person that was sexually harassed by my supervisor as well as coworkers. I presented this to my manager, and until -- until this date, they have yet to have done anything about it. I've only received criticism in regards from the company. There were consequences. I had 40 hours of work. They brought it down to just 33 hours of work. I'm now taking classes to be a promotor and train my coworkers regarding sexual harassment and abuses. If this would have happened earlier and we would have been informed about all of this, none of this would have happened. I would not have gone through all this depression, this trauma, this anxiety. I support law AB 1978, and I hope that all of you support us regarding this as well.	The LCO appreciates the comment.
S. Olvera, Janitor (PHT p. 28, lines 14-19)	I've been in the janitorial industry for 22 years. I also support AB 1978, which my union is proposing. I'm also taking courses so that I can educate my coworkers and, primarily, the supervisors so that there be no abuse against my coworkers, and I hope that all of you also support this.	The LCO appreciates the comment.
E. Rosas, Janitor (PHT p. 28, lines 24-25; p. 29, lines 1-11)	I'm coming here from Orange County. I have been a janitor for 15 years, and I support Proposition AB 1978 that my union is proposing, and I'm preparing myself to be a promotor in regards to sexual abuse and sexual harassment in our workplace because we see all of the abuse that we suffer on behalf of the supervisors. And, many times, we do not talk about it or comment about it because of the repercussions that we could receive. We work with fear -- the fear because we work eight hours alone, and we're also living with these abuses.	The LCO appreciates the comment.

	And this proposition that we want you-all to support us with, we want to present this message that that's enough.	
Y. Rustrian, Daughter of a Janitor (PHT p. 29, lines 16-25; p. 30, lines 1-11)	I'm here supporting my union's -- my union's new changes to the legislation, but I'm also the daughter of a janitor who, unfortunately, had to go -- she was sexually harassed twice in different buildings, and this was because the supervisors didn't have the right training in both locations. And I didn't find out until she was fighting for AB 1978. And, unfortunately, when she -- she went up to tell her story, that's the first time I found out, and, for me, it was hard finding out the reason why she stayed in those jobs after they sexually harassed her, and it was because we were in Guatemala, and she knew she had to provide for us, and she knew that this legislation was very special to her because there's many other mothers, other women that are going through this right now. This is why this legislation would be so big for janitors across California because they truly need it, and we have many women that are here that have stories here today because they've gone through it, just like my mom has, and that's why I support my union's recommendations.	The LCO appreciates the comment, but notes that this proposal implements the sexual violence and harassment prevention training requirement created by AB 1978 rather than amending that legislation.
H. Gonzales, Janitor (PHT p. 30, lines 18-32; p. 31, lines 1-24)	I am from Orange County. I work as a janitor for a nonunion cleaning company, and I also clean houses in order to maintain my household. In my country, I was a nurse, but I got here to the United States about 18 years ago. When I arrived, I fell in love, and I got married. I lived in a relationship where there was domestic violence. I am barely getting out of that relationship, but now, that means that I'm a single mom, and I have two sons: one that's eight years old and the other one that's 15 years old. They motivate me, and they're the biggest reason why I struggle. The nonunion janitorial industry is full of labor violations. I'm heartened to know that there is now a law, AB 1978, that is against sexual harassment in the cleaning industry. In March, I became certified as an industrial safety promotor where I learned about sexual harassment and also sexual violence in domestic and external relationships. In the next couple of days, I'm actually going to begin doing these presentations for	The LCO appreciates the comment.

	my colleagues -- my janitor colleagues on these topics. Many of the companies do not do trainings. All they do is have us sign a sheet that says we've got the sexual harassment training, but no training exists. The law, AB 1978, is necessary in order to make sure that we understand what sexual harassment is in our community, nor in our community is there much know-how about what sexual harassment is. Once I became certified as a safety promotor, I then understood that sexual harassment isn't only common, but it's also illegal.	
E. Gonzalez, Janitor (PHT p. 34, lines 9-25)	I came to this country when I was 28 years old. My first job was to work in the janitorial industry. I was also abused verbally by the supervisors. I was harassed. I was -- I was cheated, and I've been just quiet for these years through all of the things that I've been suffering in this building. I was afraid of leaving that job because of the fact that I had children in Guatemala that I had to support. I didn't want to leave the job. And thank you, now that you're helping us learn to become teachers and get rid of all this suffering that we've suffered in these buildings. This happens during the night jobs. We're harassed by the actual supervisors. And so now I'm also supporting this law -- this law, AB 1978, and to help all of my coworkers that have also lived through this trauma, and they've been unable to talk about it.	The LCO appreciates the comment.
I. Diaz, Janitor (PHT p. 38, lines 2-12)	I'm here that you -- for all of you to support us for AB 1978. We're taking classes to receive trainings regarding sexual harassment. I've been working in this industry for 30 years. I've had a lot of problems regarding all of this. It is now time that we stop, stop with this harassment for our coworkers, for both male and female. Both. In my case, I've been harassed, and I never talked about it. And now, I regret not having talked about it. It is now time to stop this, and that's why I'm taking classes, and I'm preparing myself for this.	The LCO appreciates the comment.

M. Lopez, Janitor (PHT p. 38, lines 17-25; p. 39, lines 1-5)	I've been in the janitorial industry for 30 years. I'm here today to support the law, AB 1978. I'm a person who's being trained -- trained to become a teacher and to be able to provide trainings in the workplace. As you have heard from -- as have you heard from my coworkers, they have been abused and harassed in the workplace. That's why I'm here. I'm here to obtain the training so that I can train my coworkers so that they will talk about all the harassment that takes place in the workplace. During the entire time I've been working in janitorial service, I've seen many supervisors that are supposed to provide training, but they don't do so. They just have you sign the paperwork.	The LCO appreciates the comment.
A. Barragan, Janitor (PHT p. 39, lines; p. 40, lines 1-9)	I've been working in the janitorial industry for 11 years. I'm here because I want to continue to learn, and I want to represent my union. I do know now that we have the law that was signed by Jerry Brown, AB 1978, which provides us the support to initiate ourselves as promoters. Now we're taking classes to become certified teachers to be able to go to our companies to provide classes to our coworkers regarding sexual harassment in the workplace. I think that today we have more support. I'm sure that a lot of the people that have been harassed will now feel supported. They will come out of the shadows. They will talk. They will look for help because they will be seeing that there are large groups that are taking these classes where they might be able to go and ask for help. There's also a group of friends -- male friends. Harassment is not just towards women. It's not -- it does not focus on one particular gender. All type of janitors live through this harassment in all places. It can be in our homes, in schools, at a gym, but it's more noticeable in our industry. Today, because we have this law, Law 1978, the janitorial industry woke up and spoke up and said, "This is enough. That's enough." We will prepare ourselves so that we could go and give these classes at our workplaces.	The LCO appreciates the comment.

Isabel, Former Janitor (PHT p. 40, lines 19-25; p. 41, lines 1-13)	I was working in janitorial work at a movie theater where I saw a lot of irregularities -- from lack of breaks, lack of overtime, seeing how they would take their clothes off with their eyes, and obscene comments. I was harassed by the supervisor. They never trained me, even though I knew, as a promoter of mental health, what harassment was about. I realized that harassment does not respect titles. It does not respect religion. It doesn't respect anybody. Living through this is not easy. I felt impotent in not being able to help my coworkers. Remembering this hurts, and I'd like to go back and help them because I was able to get out. Like I said, I'm a promoter of mental health, and I'm a teacher in technology. And I said -- I said to myself, "I cannot be the only one that is now free and not be able to do anything for them." I'm here now talking for them, representing them, how important -- it is very important that they are provided this knowledge, their rights, what harassment is, because even in present day, they are not aware of what it is.	The LCO appreciates the comment.
Elena Dineen, Maintenance Cooperation Trust Fund (also in PHT p. 8, lines 10-25; p. 9, lines 1-9; p. 12, 13-15)	The MCTF is a statewide watchdog whose mission is to create lawful business order in the property services industry where responsible contractors and janitors mutually prosper by abolishing the underground economy and eliminating unlawful operators. Unlawful and illegal business practices define day to day business practices in the non-union sector of the industry. Fly-by-night janitorial contractors undercut bids from upstanding employers in a race to the bottom. In order to increase their own profit margins, unscrupulous contractors violate basic workplace rights. Falsifying payroll records, violating basic health and safety protections, and stealing wages from workers define day to day business practices for the majority of employers in the industry. 50% of the employers investigated by the MCTF operate in the underground economy. These operators and others who operate in the industry do not have Human Resources departments or an infrastructure to support compliance with basic workplace laws. This reality contributes to the blatant disregard for basic laws.	The LCO appreciates the comment.

	There are less than 100 responsible Union employers in the industry, and more than 4000 registered operators with the Employment Development Department. In an industry where fraud and worker exploitation is rampant, strong regulations are needed to ensure the Sexual Violence and Harassment Prevention Training requirement is not used to further disadvantage law abiding employers and actually achieves its initial intent of prevent workplace violence. MCTF thanks the department for its work on the regulation and supports the department's adoption of the proposed regulation, at Sections 13820 through 13822, with several recommended changes, which we'll also submit in writing. We're offering this testimony from our perspective having investigated and done work to investigate the nonunionized janitorial company's unlawful and illegal business practices, define the day-to-day business practices in the nonunion sector of the industry. I see many of these companies falsifying payroll records, violating basic health and safety protections, stealing wages from workers. And for that reason, we're requesting that the sexual violence and harassment prevention training requirements are strong so that they're not used to further disadvantage law-abiding companies and actually achieve the intent with which the law was originally passed, which is to prevent workplace violence and protect workers from sexual harassment.	
Sandra Diaz, SEIU USWW (PHT p. 41, lines 19-25; p.42, line 1; lines 4-25; p. 43, lines 1-25; p. 44, lines 1-15)	And the many of you heard from many voices in the industry, both union and nonunion workers sharing their experience in the industry, but also sharing that many have them have gone through extensive training to not only be able to stand here and share their stories but also understand the issue. So, you know, also a little bit of our union. We're SEIU . . .USWW, and we represent 45,000 service workers up and down the state of California, all of which are contracted out. We represent security officers, airport workers, janitors, and workers at events and arenas. And when we embarked this journey -- which all our members are wearing their Ya Basta! shirts -- shortly thereafter the documentary Rape in the Night Shift. And what we --	The LCO appreciates the comment.

	at that moment, the union made a strategic decision to say, "We know that we've been fighting sexual harassment cases and sexual violence cases in the industry one by one, but it's systemic." How do we address something that's systemic across the board in the union world? And it's even -- the hurdles in the nonunion world are a lot more -- the workers are a lot more isolated. They get many more challenges in the economy that are present day in and day out. So we partnered up with our -- with the maintenance corporation trust fund, our sister organization, for how to move an industry forward and how to tackle this issue in the pervasive culture that leads to sexual violence. And there, what we learned from the workers themselves, we had -- we worked with many sexual violence advocate organizations and said the workers are going to know best. The workers are going to know best what the solutions are. So we started doing trainings. And the workers themselves, what we realized, was there was very little knowledge of what sexual harassment was -- the difference between sexual harassment, how to identify it early on, how to report it, so the sexual harassment cases too often became sexual assault cases, stalking, and even rape. We had a lot of classes where our members identified, "Oh, so when I walked into the workspace and I heard the comments that spoke about me sexually, I had the opportunity to stop that then, and I didn't know that. I could have presented what the outcome was later on." We had workers that didn't understand that it was, one, illegal, and they thought "sexual harassment" once -- once they were attacked, and, at that point, they didn't know what to do, how to report, and all these barriers based on legal statutes of what to do with it. So you had a worker say, "Hey" -- when she realized what rape was and rape was different forms of penetration -- she thought, "This is what rape is. I was raped." And so I say this because that was the birth of what AB 1978 was. How do we get workers in the entire industry to be able to identify the differences between each one of these, understand how to prevent it, and how to report it, and able to rely on one another to do so? That is the heart of what it was, and I'm here, very proud to say	

	that we've been training both people in the union -- the nonunion CTF, and the union workers to be able to do just that. And they've all been going through -- many of our members, now member leaders, have been not only telling their stories and going through a process of healing, but -- in doing some policy and legislative work, but they've also been taking extensive courses that are preparing them on -- not just what's protected under law and FEHA -- but, also, what is trauma-informed. How important is that?	
M. Mejia, Janitor (PHT p. 46, lines 14-25; p. 47, lines 1-15)	I've been a janitor for 14 years. I have survived sexual harassment and sexual abuse, and I'm a promoter. Today, I'm telling you that Law AB 1978 is good for all of us survivors of everything that we've suffered, all the survivors that have already spoken, as well as the survivors that have yet to speak. We don't want any changes to it because we've all suffered through all these pains. It's been very difficult for us to break silence. It's very painful what we've suffered, and we're going to be suffering this for the rest of our lives. With this law, not only do we want to break silence, but we want to break a culture to be able to -- to have power over ourselves, to have power against -- we want this change that will come with this law. We want this change for us because we want to be the voice -- the voice so that the men and women will no longer stay quiet. This law -- this law -- this law indicates that there needs to be changes. There needs to be a change against sexual abuse and sexual harassment. I am a grandmother, and I have three grandchildren, and I have six -- I have three granddaughters and six grandsons, and I don't want them to suffer through this. I don't want them to suffer through their schools, through their work, and to go through this. We have to start.	The LCO appreciates the comment and notes that the proposal implements, but does not change, the underlying law.
S. Rubio, Janitor (PHT p. 47, lines 22-25; p. 48, lines 1-8)	What I want to talk about is in regards to the sexual harassment problem that we have in our workplace, and what's most important is that we do not want this law to change because any change in the law could affect us in our workplace because of the sexual harassment that suffer on behalf of our supervisors. I'm a coworker and receiving training -- training to become a teacher/a	The LCO appreciates the comment and notes that the proposal implements, but does not change, the underlying law.

	trainer so that I can go to my coworkers and train them -- train them so that they will learn to be protected against their abuser, so it's very important that the law not be changed because it would affect all of us.	
Eric Christiansen, Facility Masters	Facility Masters of Southern California, Inc. is a small business janitorial service provider in the state of California who will be affected by the proposed sexual violence and harassment prevention training requirement for property service workers.	The LCO appreciates the comment.
John N. Gill, Township Building Services, Inc.	I wish to express our issues with the existing law and the difficulties posed in conformance especially for small to medium sized companies. I wanted to attend the hearing in Los Angeles on 5-21-19 but was unable to do so due to prior commitments. Also, these are important hearings and I believe, at the very least, that your department should conduct these hearings in multiple location, at least one in SoCal and one in NorCal.	The LCO appreciates the comment. The hearing was held in Los Angeles to accommodate the largest number of covered workers and employers.
John N. Gill, Township Building Services, Inc.	We are opposed to the proposed rules changes due to the following: Employers are in the first year of trying to comply with the existing regulations which were effective 1-1-2019. We have already trained all Supervisors and a relative small number of line staff.	The LCO notes the comment and appreciates that the commenter has already provided some training. However, the current regulatory proposal is not final and is not yet in effect, nor was any training regulation effective on 1-1-2019, so this does not represent a change from any existing regulations.
John N. Gill, Township Building Services, Inc.	We are opposed to the proposed rules changes due to the following: Companies such as ours, with extremely small profit margins, are finding it difficult to get line staff to participate in training especially with part time staff working by themselves in remote locations. Smaller employers have multiple work sites and it is my guess that most of them are not aware of the existing law.	The LCO appreciates the comment but notes that the statute mandates training for all covered workers and does not make exceptions for smaller employers with multiple worksites.

John N. Gill, Township Building Services, Inc.	If the State makes compliance difficult and expensive it lends itself to non-compliance and unintended problems for everyone. Also, this law opens the door for predatory Attorneys who will take up unsubstantiated claims, make outrageous demands and basically put a gun to head of employers to settle. The State is opening another door for Attorneys to exploit the laws similar to what is happening, for sure, with the PAGA regulations. We urge your department to allow the existing regulations to play out, allow them to work, for at least two to three years prior to making any further changes.	The LCO notes that, contrary to the commenter's statement, there are no existing janitorial training regulations. The remainder of the comment is beyond the scope of the proposal.
Ben Ebbink, California Chamber of Commerce	California Government Code Section 11349-11349.6 set forth the standards that proposed regulations are analyzed for purposes of approval and publication, including: (1) necessity; (2) authority; (3) clarity; (4) consistency; (5) reference; and (6) non-duplication. We do not believe that the proposed regulations satisfy these criteria.	The LCO does not agree that the regulatory proposal fails to satisfy these requirements, for the reasons set forth in the Initial Statement of Reasons and the Final Statement of Reasons.
Ben Ebbink, California Chamber of Commerce	Labor Code Section 1429.5 mandates consideration of the Fair Employment and Housing Act ("FEHA") requirements of Government Code Section 12950.1 in the development of these regulations. In order to ensure that janitorial training mandated under AB 1978 (2016) is consistent with recent changes to the law made by SB 1343 (2018), and to eliminate the need for janitorial employers to complete two similar, but not identical trainings, these regulations should ensure that janitorial training is consistent with the requirements of FEHA. Unfortunately, these proposed regulations differ in many ways from the training requirements under FEHA, which will result in confusion and duplication, and require janitorial employers to comply with two separate and different training requirements.	After the public comment period concluded for the initial proposal, AB 547 was signed into law. One of the provisions of this law specifies that the training required in the janitorial industry "shall be in lieu of, and not in addition to, the requirements for training under Government Code section 12950.1, as long as the training ... meets or exceeds the requirements for training under Section 12950.1 of the Government Code." (Amended Labor Code section 1429.5(a).) The Department of Industrial Relations will ensure that the required

		training content meets or exceeds the training requirements under Government Code section 12950.1. Therefore, an employer covered by both laws need not comply with two separate and different training requirements and need only provide the training required in these regulations.
Chris Waldheim, J's Maintenance (PHT p. 15, lines 5-17)	I think that the first comment I'm going to make is that I think you need to add some language about subcontractors. We're a self-performing company. I think this rule, kind of, ignores the fact that a lot of janitorial firms are using subcontractors. So you could have a situation where you're requiring the contractor to do the sexual harassment training, but we're not saying anything to that sub, and it's one of the reasons that we've started the licensure or the registration bill. Let me rephrase that: In order to make sure that even the subs need to have some kind of registration. So I just want to make sure there's some language in there addressing that.	The LCO appreciates the comment, and notes that subcontractors are required to register and provide training under the law, if they meet the definition of "employer" in Labor Code section 1420(e)(1). For this reason, the LCO declines to add specific language to the regulation regarding subcontractors.
Stephen C. Dwyer, General Counsel, American Staffing Association	Staffing firms should not be considered janitorial "employers" who are required to register and to provide sexual harassment training. Staffing firms function as intermediaries that provide temporary employees to clients for use in the clients' trades or businesses. Stated differently, staffing firms are in the business of finding and screening qualified candidates and assigning temporary and contract workers to provide special assistance in cases of employee absences, special projects, or seasonal workloads. Staffing firms do not, however, provide the underlying services rendered by the temporary workers. Rather, such firms recruit, screen, hire, employ and assign employees who render services, on a temporary and contract basis, to generally work under the supervision of clients. Although staffing firms routinely employ and assign employees such as lawyers, accountants, and doctors,	The LCO declines to make the proposed modification to create a regulatory provision that would exempt staffing firms from the requirements of this law because the statutory definition of "employer" - which is the trigger for the law's registration and training requirements - does not allow for such an exemption. The statute provides only one exclusion from the definition of "employer," and that is for "an entity that is the recipient of the janitorial

	staffing firms are not regulated or viewed as law firms, accounting firms, or medical practices. To do so would produce anomalous results, and to regulate California staffing firms as janitorial contractors would produce similar results and reflect a fundamental mischaracterization of the services such firms render. That laws such as California's janitorial service registration and harassment training law should be inapplicable to staffing firms is reflected by a decision by a California appeals court, which ruled that staffing firms in the business of assigning laborers to be supervised by construction contractors were not required to be licensed as construction contractors. See Contractors Labor Pool, Inc. v. Westway Contractors, Inc., 61 Cal.Rptr.2d 715 (Ct. Appeal, 2d Dist., 1997). This ruling was subsequently codified in the California statutes. California Business & Professions Code, Chapter 9, Section 7026.1. In addition to the fact that staffing firms do not render janitorial services, there is no public policy reason to regulate them as such, particularly since their temporary workers already are required to receive sexual harassment training pursuant to SB 1343, signed into law last year. Similarly, staffing firms already maintain the records referenced in Section 13819 and articulated in Labor Code 1421. Therefore, the final rules should make clear that the janitorial services law's requirements do not apply to a temporary service employer, as defined in Labor Code section 201.3(a)(1).	services." (SB 83, eff. 6/27/19.) The LCO interprets this to mean that an entity that hires a janitorial employer, as defined in the law, to provide janitorial services for that entity, is not deemed to have "engage[d] by contract, subcontract, or franchise agreement for the provision of janitorial services." This would apply, for example, to a restaurant that hires a janitorial business to provide cleaning services for the restaurant. This exclusion would not apply to a staffing agency that contracts to provide janitorial services through use of janitorial workers.
Jennifer A. Reisch, Equal Rights Advocates Esta Soler, Futures Without Violence	Equal Rights Advocates ("ERA") and Futures without Violence ("FUTURES") . . . support the adoption of the proposed regulations and submit comments and recommendations with respect to the language of proposed Sections 13820 through 13822. ERA is a national non-profit legal organization whose mission is to protect and expand economic and educational access and opportunities for women and girls. For 45 years, ERA has been a leader in the field of gender justice, using litigation, policy reform, public education, and collaborative advocacy strategies to combat discrimination and marginalization at work and	The LCO appreciates the comment.

	in schools. Along with SEIU United Service Workers West (SEIU-USWW), ERA was an organizational sponsor of AB 1978 and helped to convene the Ya Basta! Coalition that came together to support its passage and implementation. FUTURES is a national non-profit organization based in San Francisco, CA, that for over 30 years has been providing groundbreaking campaigns, programs, and policies that empower individuals and organizations working to end violence against women and children, and improve individual and system responses to violence and abuse. FUTURES leads the only national resource center dedicated to addressing sexual harassment and violence, and other forms of gender-based violence, impacting workers and workplaces. Through this resource center, FUTURES works in collaboration with anti-violence advocates, unions, service providers, employers, and others to address the vulnerability of low-wage workers to experiencing violence and harassment, and improve workplace responses to such violence to create safer, more supportive workplaces for all. ERA has a long history of representing women workers in the janitorial industry who have been sexually harassed, assaulted or otherwise subjected to violence in the workplace. Our past clients include Maria Bojorquez, one of the women featured in the Rape on the Night Shift documentary first broadcast in 2015, which exposed the widespread and endemic nature of sexual violence in the industry. That documentary also served as a catalyst for partnerships among workers' rights organizations and anti-sexual assault advocates. In 2016, ERA, FUTURES, and other members of the Ya Basta! Coalition came together to support the campaign led by immigrant women workers that successfully advocated for the passage of AB 1978. Since then, ERA and FUTURES have worked with our coalition partners to provide training and other support to the janitorial worker promotoras who continue to lead this campaign and to advocate for recognition (and expansion) of their role in preventing sexual harassment and shifting workplace culture across their industry to focus on prevention, response, and greater safety.	

	ERA's experience representing women janitors as clients confirms what a 2016 UC Berkeley Labor Center study of the property services industry in California found: Far too many janitorial workers, most of whom are people of color and/or immigrants, face unfair and dangerous working conditions that make them extremely vulnerable to sexual harassment, sexual violence, and wage theft. In other words, sexual harassment and violence are both symptoms and causes of economic insecurity in an industry where many workers are employed by invisible employers. The two-part structure of AB 1978 and the content of its training provisions reflect a recognition that the problems of wage theft and sexual harassment/violence in the janitorial industry are interconnected. ERA and other members of the Ya Basta! Coalition agree with the Department that 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." We believe that the structural characteristics of the janitorial industry, coupled with the vulnerability of its largely female, overwhelmingly immigrant, low-paid workforce call for an industry-specific and worker-centered approach to sexual harassment prevention and response. AB 1978 intentionally reflects this approach; at the time of its enactment, it was the first state law to mandate sexual harassment and violence prevention training for a specific industry, and to require that employers provide in-person training not only to supervisors and managers, but also to non-supervisory employees, including front line cleaners. ERA and FUTURES support the proposed regulations on the Sexual Harassment and Violence Prevention Training ("Training Regulations"). We suggest a few specific changes and additions to proposed sections 13820-13822 … in order to clarify these provisions and ensure that they fully implement AB 1978.	
Sandra Diaz, SEIU USWW	While SEIU USWW supports the Department's adoption of the proposed regulations at Sections 13810 through 13819 and Sections 13820 through 13822, SEIU USWW submits comments and	The LCO appreciates the comment.

	recommendations for changes to the proposed regulations. SEIU USWW represents more than 45,000 janitors, security officers, airport service workers, and other property service workers across California. The mission of SEIU USWW is to lead the way to a more just and humane society; building power for all service workers by developing member leadership and activism, winning strong contracts, organizing unorganized service workers, building political and community power, and engaging in direct action to improve the lives of working people in California. The prevention of sexual violence and harassment for property service workers and janitors is of utmost importance to USWW. Since 2015, USWW has embarked on the multi-tiered “iYa Basta!" campaign ("Enough is Enough!") to combat on-the-job sexual violence and harassment. The Union joined the Ya Basta! Coalition and launched the "iYa Basta!" campaign shortly after the airing of a PBS/Frontline documentary entitled "Rape on the Night Shift" which detailed the exploitation of female janitors by their supervisors "and the solitude of the night -to violently harass them at work." In 2016, in preparation for the janitorial contract campaign, USWW conducted a survey of members. Over half of the respondents reported being sexually harassed or sexually assaulted in the workplace. For USWW, "[t]his was just alarming." Secretary-Treasurer Alejandra Valles stated: "As a union that represents predominantly immigrant janitors and 70 percent of them are women, I just said, 'We can't be a janitors union if we don't do anything about this.' We have to take on this issue that is rampant in this industry." USWW was able to win strong sexual harassment language in its janitorial contracts. USWW also embarked on a legislative campaign, supporting Assembly Bill 1978 which created the janitorial registry and training requirements. USWW is dedicated to combating sexual violence and harassment for property service workers. For these reasons,	

	USWW believes that certain changes are needed to improve and strengthen the Janitorial Registry and Training regulations.	
Nicole Marquez, Worksafe	While Worksafe supports the Department's adoption of the proposed regulations at Sections 13810 through 13819 and Sections 13820 through 13822, Worksafe submits comments and recommendations for changes to the proposed regulations. Worksafe is a California-based organization dedicated to eliminating workplace hazards. We advocate for protective worker health and safety laws and effective remedies for injured workers. We watchdog government agencies to ensure they enforce these laws. We also engage in campaigns in coalition with unions, workers, community, environmental and legal organizations, and scientists to eliminate workplace hazards from the workplace. Worksafe views sexual assault and violence as a serious workplace health and safety issue. Sexual assault as a type of workplace violence is particularly pervasive in certain sectors, especially in low-wage sectors where women of color and immigrant women are employed, such as janitorial. In 2010, nationally, Latinas represented 10.2% of the total workplace fatalities for women. Half of all the Latinas who died in the workplace were victims of assaults and violent acts. Immigrant women are particularly vulnerable for a number of reasons, which may include power, fear of retaliation, undocumented status, gender, and more. All these characteristics may influence their decision to report workplace violence such as sexual assault. Janitorial workers are particularly vulnerable for a variety of reasons to sexual assault and violence. Thus, the necessity of a systemic and industry specific solution. In 2016, Worksafe partnered with SEIU-USWW to form the YaBasta! Coalition and launch a fight for statewide legislation on the issue of sexual violence and harassment on a uniquely worker-centered, industry-specific and industry-wide basis. This campaign led to	The LCO appreciates the comment.

	the passage of Assembly Bill 1978, establishing the janitorial registry and training requirements. Worksafe is dedicated to combating sexual violence and harassment for all workers, but the unique characteristics of janitorial industry and the workers who make up this industry call for an industry specific approach. AB 1978, for example, is the first and only state legislation to mandate sexual harassment and violence prevention training not only for supervisors and managers in the industry but also for each and every front line cleaner. Training front line, vulnerable workers in an industry where sexual violence is endemic is a fundamentally different proposition than the traditional supervisor trainings aimed not at vulnerable workers who may be subject to harassment but rather at supervisors and managers whose conduct may prove to be a liability for their employers.	
Alejandra Domenzain, UC Berkeley Labor Occupational Health Program	LOHP supports the Department's adoption of the proposed regulations for Sections 13820 through 13822, and submits the following comments and recommendations on the proposed regulations. LOHP's mission is to promote safe, healthy and just workplaces and build the capacity of workers and worker organizations to take action for improved working conditions. For the past three years, one of our areas of focus has been sexual harassment in low-wage jobs, with a particular emphasis on janitorial work. We recognize that women, immigrants, and people of color are disproportionately represented in low-wage jobs where labor violations are rampant, including sexual harassment and violence (SH/V). In particular, we know that janitors are uniquely vulnerable to SH/V, as detailed in our 2016 report, "The Perfect Storm: How Supervisors Get Away with Sexually Harassing Workers Who Work Alone at Night." Since the passage of Assembly Bill 1978, we have worked on the development of a model curriculum for California's Department of Industrial Relations, in collaboration with Service Employees International	The LCO appreciates the comment and collaboration on development of the training module.

	Union-United Service Workers West and the Maintenance Cooperation Trust Fund. This curriculum was designed to meet the requirements of AB1978 for the training to be carried out with all employees and supervisors in the janitorial industry.	
Sandra Henriquez, California Coalition Against Sexual Assault (CALCASA)	While CALCASA [support]s the Department's adoption of the proposed regulations at Sections 13810 through 13819 and Sections 13820 through 13822, we submit recommendations for changes to the proposed regulations. CALCASA represents 84 Rape Crisis Center Programs, and thousands of survivors sexual harassment, misconduct and assault in the state of California. The mission of CALCASA is to provide leadership, vision and resources to rape crisis centers, individuals and other entities committed to ending sexual violence in California. Creating work environments in which workers feel safe it the hope but the prevention of sexual violence and harassment for all workers is of utmost importance to CALCASA. However, we recognize that the isolated nature of the work, coupled with the reality that many of these workers are immigrants, workers in the janitorial industry are at disproportionate risk for sexual abuse. Through the 84 Rape Crisis Centers that CALCASA represents, between 34,000-37,000 sexual assault survivors receive services each year. Many are from groups that are marginalized and whom do not feel safe reporting these crimes to law enforcement. We believe that is essential that work places adopt policies and practices which not only inform workers about their rights but more importantly, we must stop these abuses before thy ever occur. We feel strongly that workers and abuse survivors are not only experts in their experiences and lives but that they are also essential to creating worker-led solutions that can help to transform their industries. Since 1980, CALCASA has been dedicated to combating sexual violence and harassment for all workers, but the unique characteristics of janitorial industry and the workers who make up this industry	The LCO appreciates the comment.

	call for an industry specific approach. AB 1978 (2016), for example, is the first and only state legislation to mandate sexual harassment and violence prevention training not only for supervisors and managers in the industry but also for each and every front line cleaner. Training front line, vulnerable workers in an industry where sexual violence is endemic is a fundamentally different proposition than the traditional supervisor trainings aimed not at vulnerable workers who may be subject to harassment, but rather at supervisors and managers whose conduct may prove to be a liability for their employers.	
Jesse Newmark, Oakland Centro Legal de la Raza; Lisa Bixby, Legal Aid at Work; Nayantara Mehta, National Employment Law Project	Several non-profit legal services organizations that serve low-wage workers submitted comments in support of the proposed regulations at Sections 13820 through 13822, and additionally submitted comments and recommendations for changes to the proposed regulations that are discussed elsewhere. These commenters believe that the unique characteristics of janitorial industry and the workers who make up this industry call for an industry specific approach to addressing sexual harassment and violence prevention and noted the following: AB 1978 is one of the first state laws to mandate sexual harassment and violence prevention training not only for supervisors and managers in the industry but also for each and every employee. Training front line, vulnerable workers in an industry where sexual violence is endemic is a fundamentally different proposition than the traditional supervisor trainings aimed not at vulnerable workers who may be subject to harassment, but rather at supervisors and managers whose conduct may prove to be a liability for their employers.	The LCO appreciates the comments.

Summary and Response to Comments Received Following the Period the Modified Text Was Available to the Public from November 25, 2019 through December 10, 2019:

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Section 13820 - Definitions		
a. Section 13820(f) – Definition of Trainers		
Section 13821 - Standards Regarding Timing, Documentation, and Languages for Training		

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
Andrew Gross Gaitan, Service Employees International Union, United Service Workers West ("USWW"); Jennifer A. Reisch, Equal Rights Advocates; Esta Soler, Futures Without Violence; Alejandra Domenzain, UC Berkeley Labor and Occupational Health Program; Nicole Marquez-Baker, WorkSafe; and all members of the Ya Basta! Coalition	The Regulations Should Make Clear That The Sole Determinant Of Whether Peer Trainers Are Available To Provide Training Should Be The Qualified Organizations Designated on the Department Of Industrial Relations' Website Listing Based on our experience with janitorial service contractors, we believe covered employers may be overly quick to conclude based only on their own knowledge and belief that there are no qualified peer trainers available to provide training and therefore choose to provide the training without peer trainers. The statute is specific in stating that the Department of Industrial Relations will establish an internet website listing to indicate whether there are qualified peer trainers available to provide the mandated trainings. The regulations should be equally explicit that the determination of availability is to be made by this website listing and not by an individual covered employer's own, potentially limited knowledge and resources. Under "§ 13820. Definitions", paragraph (f) should be modified to include the text identified below in *italics*: (f) "Trainers" for purposes of providing training to nonsupervisory covered workers means a qualified peer trainer provided by a qualified organization listed on the website of the Department of Industrial Relations. Until such website list of qualified organizations is made available, "trainers" for purposes of providing training to nonsupervisory workers has the same meaning as "trainers" in subdivision (e). Additionally, as set forth in Labor Code section 1429.5(k), if *the qualified organizations listed on the internet website affirm* there is no qualified peer trainer available, a "trainer" for a nonsupervisory covered worker may also be a trainer as described in subdivision (e) of this section.	The LCO agreed with commenters that the regulation should be as explicit as the statute in stating that the determination of whether a peer trainer is available is to be made by looking at the website listing and not by a covered employer's own knowledge. For purposes of clarity, the LCO modified the regulation to reiterate the statutory requirement that an employer look at the website list of qualified organizations to determine if a peer trainer is available. Duplication of the statutory language is necessary here in order to provide clarity and ease of compliance for the regulated community, which perceived a difference between the statute and the regulation. The LCO declined to adopt the commenters' proposed modification because it was unclear who the qualified organization would affirm this information to and whether this was a written affirmation requiring a new obligation for a qualified organization and a new recordkeeping obligation for covered employers. The LCO believes that by making the regulation mirror the statute, it is clearer that the regulation is

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
		not intended to set forth a different standard.
a. Section 13821(a) Frequency/Duration of Training		
Laura Curtis, California Chamber of Commerce, Building Owners and Managers Association, California Business Properties Association, North Orange County Chamber (hereinafter "California Chamber of Commerce")	The term "ensure" is used numerous times within the proposed modifications without any definition or explanation, causing additional and unnecessary confusion. The proposed modifications to Section 13821(a) require that the employer "ensure" that at least two hours of training are provided. We understand the reasoning stated in the Summary of Proposed Text Changes ("Summary") for removing the term "provide" because it may help to prevent duplicate training for the same trainee; however, we do have concerns with the ambiguity regarding the use of the term "ensure." Additionally, as modified, the provision requires that "The burden of establishing that the training was provided as required shall be on the employer, including where the employer has ensured that the training was provided by another entity or janitorial employer." How is an employer expected to ensure the training is provided? Does the employer need to attend the training with the employee? Does the employer need to repeatedly check in on the training while it is being conducted? Or, is the certificate of completion sufficient? The ambiguity becomes more prevalent when the burden is on the employer to ensure the training was provided, but the training was in fact provided by another entity as permitted under the law. As such, this section is lacking in clarity and more explanation is necessary regarding how an employer meets the requirement of "ensuring" that the training was provided.	The LCO does not agree that the term "ensure" lacks clarity and cannot be reasonably implemented by employers. As explained in detail in the Summary of Proposed Text in the Notice of Modifications, the LCO has adopted a flexible approach to compliance in light of the breadth of the definition of "employer" in Labor Code 1420(e), as amended by SB 83. This will allow employers to arrange to have training provided in the manner that best suits their business and operational needs. The term "ensure" is used to obligate the employer to effectively monitor its subcontracts or franchise arrangements rather than disclaiming responsibility by pointing to another entity for compliance. Again, employers have the flexibility to determine how they will obtain documentation and police the training obligations, e.g., by making it a provision of their subcontracts, or requiring that subcontractors provide training records within a specific period of time. However, as part of the companion Janitorial Registration regulation,

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
		employers will need to certify to the LCO that the training has been provided as required, whether the applicant provided the training or whether the training was provided by another entity, and the date(s) on which the training took place. In addition, the employer is required to maintain documentation for the training, including the sign-in sheets and the training completion forms. These are reasonable and clear requirements that allow employers the flexibility to arrange compliance in the most efficient way for their business, while placing appropriate responsibility on each employer to exercise due diligence to meet the statutory requirement that each employer provide training to their supervisory and nonsupervisory janitorial workers. The LCO further declines to adopt the proposed modification, which would require unnecessary regulation of business relationships between janitorial employers. Finally, the LCO notes that the word "ensure" has been used in other Department of Industrial Relations

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
		regulations involving workplace safety training to adequately address compliance where multiple parties have a training obligation regarding a particular set of workers. See Cal. Code Regs., tit. 8, § 5189(g)(2) & (3) (Occupational, Safety & Health Standards Board, Process Safety Management for Petroleum Refineries).
Section 13822 – Objectives and Content of Training		
a. Sections 13822(a) and (b)		
Laura Curtis, California Chamber of Commerce	The proposed modifications require that "the employer shall ensure that the content of the training. . . is the training content developed by the Labor Occupational Health Program (LOHP)[.]" Again, we are concerned with the term "ensure" especially considering Labor Code Section 1429.5(k)(2) which states, "An employer governed by this part shall be deemed to be in compliance with the requirement to use a peer trainer to provide the required training if they contracted with a qualified organization that was listed on the department's internet website at the time of the training." So long as the employer utilizes an organization listed on the department's website, the employer should be deemed in compliance. Since the employer itself cannot conduct the training, the employer should not have the burden of ensuring the training meets the requirements of the LOHP, that burden should be on the organization providing the training. For these reasons, we believe that these proposed modifications fail to provide clarity and that they actually create more ambiguity than what is stated in the newly adopted Labor Code Section 1429.5.	The LCO agrees with the commenter in part that as long as the employer uses one of the qualified organizations listed on the Department's website, the employer should be in compliance with the requirement to use the LOHP training because that is the training a peer trainer would use to train nonsupervisory workers. However, statute also directs the Division to require employers to use the LOHP training to train the supervisors of the nonsupervisory workers, and to use the LOHP training content when the employer is using another trainer for its nonsupervisory workers because a peer trainer is not available. Further, the requirement to use a qualified organization to provide a peer trainer will

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
		not become effective until the list of qualified organizations is posted on the Department's website by January 1, 2021, meaning that training will need to be provided when these regulations become effective, which is anticipated to be prior to the date when the obligation to use a peer trainer becomes effective. In all of these instances, the employer is required to use – or as explained in response to the comment above, to "ensure" – that the training content is the LOHP training content. Therefore, the LCO believes use of the word "ensure" in this regulatory provision is the most effective "catch-all" term to reflect that the employer is obligated at all times to ensure the LOHP training is the training content provided, rather than any other sexual harassment training content.
Additional General Comments		
Andrew Gross Gaitan, SEIU USWW; Jennifer A. Reisch, Equal Rights Advocates; Esta Soler, Futures Without Violence; Alejandra Domenzain,	USWW supports the adoption of the proposed regulations and submits the following comments and recommendations with respect to the language of New Sections 13820 through 13822. USWW represents some 50,000 private sector property service workers across California, including over 25,000 janitors. Our mission is to improve the lives of hundreds of thousands of hard working women and men, both union and non-union, who clean and protect California's commercial real estate, high tech and bio tech industries as well as California's major airports and sports and entertainment venues. Along with the	The LCO appreciates the comments in support of the modifications to the proposed regulations.

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
UC Berkeley Labor and Occupational Health Program; Nicole Marquez-Baker, WorkSafe; and all members of the Ya Basta! Coalition	Maintenance Cooperation Trust Fund, Equal Rights Advocates, Futures without Violence, the California Coalition Against Sexual Assault (CALCASA), WorkSafe, and the East Los Angeles Women's Center, USWW sponsored both AB 1978 and AB 547 and organized the Ya Basta! Coalition that came together to support the passage and implementation of both bills. California janitors have organized through SEIU USWW and our predecessor locals for over a century, including those sexually harassed or subjected to violence in the workplace. Over the last 30 years, we have led California's Justice for Janitors campaign. Since our very first high profile fights late '80s and early '90s to organize janitors cleaning Apple Computer in Silicon Valley and the gleaming towers of Century City in Los Angeles, immigrant women fighting sexual violence have anchored the janitors' campaigns. The campaign to organize Sacramento's janitors centered around a fight to "Stop Sexual Harassment at Hewlett Packard!" and the story of a young immigrant woman who survived months of harassment and assault while cleaning Hewlett Packard's bathrooms before finding the courage to break her silence. In 2015 when PBS released *Rape on the Night Shift*, our members experienced the documentary's exposure of the widespread and endemic nature of sexual violence in the cleaning industry as a renewed call to arms. Through USWW, sexual violence survivors in the janitorial industry helped organize the Ya Basta! Coalition and a multi-year campaign to end rape culture in the property services industry. Through marches and protests, screenings of *Rape on the Night Shift,* speak-outs, a 5 day fast at the Capitol, a 100 Woman/100 Mile March to the Capitol, theater productions of YaBasta!, civil disobedience and thousands of hours of lobbying, the YaBasta! Coalition accomplished what workers in no other industry have: state legislation requiring the nation's first industry-wide, peer-trainer-based sexual violence prevention training for front line workers and supervisors.	

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	Since the passage of AB 1978, the YaBasta! Coalition has trained over 100 *promotoras* as qualified peer trainers. Mostly women and a few men, these trainers are all front line workers with years of experience as janitors. Some work for unionized employers and others have no union. All are survivors of or witnesses to sexual or gender-based harassment and violence at work. All share a commitment to end the industry's toxic rape culture. With the passage of AB 1978 and AB 547, the *promotoras* and YaBasta! coalition partners are poised to train and support over 100,000 workers to speak up to end and to prevent sexual harassment and violence. Experience has shown us for many years what a 2016 UC Berkeley Labor Center study of the property services industry in California found: Far too many janitorial workers, mostly people of color and/or immigrants, work in an underground economy saturated with unfair and dangerous working conditions that leave workers extremely vulnerable to sexual harassment, sexual violence, and wage theft. Sexual harassment and violence are both symptoms and causes of economic insecurity in an industry whose workers are nearly invisible to the public, government compliance agencies and even the owners of the buildings they clean. USWW and the whole Ya Basta! Coalition agree with the Department that 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." We believe the structural characteristics of the industry, coupled with the vulnerability of its largely female, primarily immigrant, low-paid workforce call for the industry-specific and worker- centered approach established in AB 1978 and AB 547. USWW supports the modifications to the text of the proposed regulations on the Sexual Harassment and Violence Prevention Training ("Training Regulations"). Our YaBasta! Coalition partners, Equal	

Commenter(s)	Comment	Labor Commissioner's Office (LCO) Response
	Rights Advocates ("ERA"), Futures without Violence ("FUTURES"), Worksafe and UC Berkeley's Labor and Occupational Health Program ("LOHP") join USWW in supporting the modifications and submitting our recommendations. December 10, 2019 Comments on NMTPR Re: Sexual Violence and Harassment Prevention Training.	
Laura Curtis, California Chamber of Commerce	California Government Code Sections 11349-11349.6 set forth the standards by which proposed regulations are analyzed for purposes of approval and publication, including: (1) necessity; (2) authority; (3) clarity; (4) consistency; (5) reference; and (6) non-duplication…. [W]e do not believe that the proposed regulations satisfy these criteria. Specifically, we are concerned that the proposed modifications create more uncertainty and confusion for employers rather than provide clarity and consistency as required by California law.	The LCO does not agree that the proposed modifications fail to satisfy these requirements, for the reasons set forth in the Initial Statement of Reasons and the Final Statement of Reasons.
Laura Curtis, California Chamber of Commerce	Reconsideration of Prior Comments Requested	The LCO declines to reconsider the prior comments which have already been thoroughly considered and responded to in the Final Statement of Reasons.
Yardenna Aaron, Maintenance Cooperation Trust Fund ("MCTF")	The MCTF generally supports the Department's adoption of the new proposed modifications of the regulations at Sections 13820 through 13822 with no recommended changes.	The LCO appreciates the comments in support of the modifications to the proposed regulations.

There were no comments received in response to the extended 15-day comment period for the form referred to in the regulations, nor were any comments received in response to the second 15-day notice with proposed modifications to the regulatory text.

Local Mandate Determination

The Labor Commissioner's Office has determined that the proposed regulations do not impose any mandate on local agencies or school districts.

Alternatives Determination

The Labor Commissioner's Office has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose

for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The new sections adopted by the Labor Commissioner's Office are the only regulatory provisions identified by the Labor Commissioner's Office that accomplish the goal of effectively implementing statutory requirements to provide sexual violence and harassment prevention training to janitorial workers. The facts and evidence adduced through this rulemaking have not presented any other alternative that would more effectively achieve the same result. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Labor Commissioner's Office's attention.

Incorporation by Reference

The Labor Commissioner's Office has determined that it would be cumbersome, unduly expensive, or otherwise impractical to publish the Sexual Violence and Harassment Prevention Training for Property Service Workers Employer Compliance Form (DLSE 800 11/19) in the California Code of Regulations (CCR). The Labor Commissioner's Office made this form publicly available on its website during the rulemaking, and provided a 15-day public comment period for the form after mailing the form and the notice to persons specified in subsections (a)(1) through (4) of Section 44 of Title 1 of the CCR.

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

ADDING SUBCHAPTER 13: JANITORIAL REGISTRATION AND TRAINING
ADDING ARTICLE 6

ADOPTING SECTIONS 13820 THROUGH 13822, INCLUSIVE, REGULATING
JANITORIAL EMPLOYER REGISTRATION

ADDENDUM TO FINAL STATEMENT OF REASONS

Nonsubstantive Changes Made During OAL Review

The following nonsubstantive changes were made to the regulation text during OAL review:

Sections 13820 through 13822

A period "." was added at the end of each section title.

Section 13821:

Subdivision (b): A title and revision date was added to the form incorporated by reference.