

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

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

**Subject Matter of Regulations:
Sexual Violence and Harassment Prevention Training for
Property Service Workers**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
New Sections 13820 - 13822**

NOTICE IS HEREBY GIVEN that the Labor Commissioner, Chief of the Division of Labor Standards Enforcement, Department of Industrial Relations, pursuant to the authority vested in her by Labor Code section 1422, and in accordance with Government Code section 11346.8(c), proposes to modify the text of the following proposed regulations within new Subchapter 13 of existing Chapter 6 of Division 1, of Title 8, California Code of Regulations, regarding Sexual Violence and Harassment Prevention Training for Property Service Workers:

Section 13820	Definitions
Section 13821	Standards Regarding Timing, Documentation, Languages for Training
Section 13822	Objectives and Content

The Labor Commissioner is proposing these regulatory text modifications for several reasons. First, some modifications are due to review, consideration and adoption of suggestions submitted to the Labor Commissioner's Office during the 45-day public comment period and at the hearing that was held on May 20, 2019. Further modifications are being proposed to implement and interpret amendments to the law that established the janitorial sexual violence and harassment prevention program that is the subject of these regulations, AB 1978 (Chapter 373, Statutes of 2016). Some amendments were made as part of Senate Bill ("SB") 83 (Chapter 24, Sections 26-32, Statutes of 2019), which became effective on June 27, 2019. Additional amendments were made by Assembly Bill ("AB") 547 (Chapter 715, Statutes of 2019), which will go into effect on January 1, 2020. The Labor Commissioner wishes to update these regulations to incorporate all of the above, and welcomes comments from the public regarding these proposed changes.

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

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

Written comments should be addressed to:

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

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations **no later than midnight on December 10, 2019**. Written comments may also be sent electronically (via email) using the following email address: DLSERegulations@dir.ca.gov

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

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

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

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

FORMAT OF PROPOSED MODIFICATIONS

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

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

SUMMARY OF PROPOSED TEXT CHANGES

Section 13820:

- 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 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.

- 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 purposes of providing training to nonsupervisory covered workers. 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 training requirements for supervisors remain the same as in the proposed regulation.
- New subsection (f) is proposed to specify who may be a trainer for purposes of providing training to nonsupervisory covered workers. Under AB 547, the director of the Department of Industrial Relations 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. Therefore, 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) (which becomes effective Jan. 1, 2020). This new subsection is necessary to implement the new trainer requirements established in AB 547 for nonsupervisory janitorial workers.

Section 13821:

- 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 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 in “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 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 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 Labor Commissioner 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 the training. In other words, the employer cannot simply direct the Labor Commissioner’s Office 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.”

- 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 frequency

requirements in this provision apply to all nonsupervisory covered workers, not just to employees.

- 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. This 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. Second, “nonsupervisory covered workers” is substituted for “janitorial employees.” This change is necessary to reflect that AB 547 amended the statute to require training for all nonsupervisory covered workers. 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. This 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 proposed regulation just required maintenance of a sign-in sheet. Although this language is duplicative of the statute, Labor Code section 1429.5(e), the Labor Commissioner believes that 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. 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. This modification is necessary to implement a new requirement in AB 547 that will go into effect after the list of qualified organizations has been 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 is being simultaneously proposed for public comment.
- New subsection (b)(1) is being 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 Labor Commissioner 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 of that. Allowing workers to obtain copies of these items is consistent with the training requirement in general, and may further learning. A secondary effect may be to reduce fraud in the program 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.

- 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 language and literacy requirements in this provision apply to all nonsupervisory covered workers, not just to employees.

Section 13822:

- 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.” This 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. Second, this provision is modified to substitute “nonsupervisory covered workers” for “janitorial employees.” 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. 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 director of the Department of Industrial Relations, or as amended in the future by the director of the Department of Industrial Relations. This 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.
- Subsection (b) is modified 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. These 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).
- 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 Labor Commissioner accepted a comment that the 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 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.

CONTACT PERSON FOR INQUIRIES REGARDING PROPOSED CHANGES

Inquiries regarding the proposed modifications may be directed to:

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