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The Division of Labor Standards Enforcement (also known as the Labor Commissioner's Office) submits this legislative report pursuant to Labor Code section 107.5(c). This section tasks the Labor Commissioner's Office with providing a legislative report, and developing recommendations for an industry-specific harassment and discrimination prevention policy and training standards for use by employers in the construction industry. This section mandates consideration of the Fair Employment and Housing Act (FEHA) requirements found in Government Code section 12950.1 in developing the training standard recommendations for use by employers in the construction industry. Discussions with stakeholders and the advisory committee convened by the Director of Industrial Relations resulted in the recommendations set forth in this report.

The recommendations in this report build on the framework established in Government Code section 12950.1 and FEHA's implementing regulations at 2 CCR §§ 11023 and 11024. Section I identifies guiding principles of an effective prevention policy with the following recommendations:

1. Employers should expand safety to include training on how to maintain a respectful worksite.
2. Leadership must uphold harassment-free behavior.
3. Training must be tailored specifically to the construction industry.
4. Policy cannot be plaintiff driven.
5. Employers must adopt robust reporting and investigating mechanisms.
6. Employers must adopt disciplinary policies that prohibit harassing and discriminatory conduct.

Section II identifies minimum training standards for the construction industry with the following recommendations:

1. Use peer trainers as a best practice.
2. Require training to be conducted in person.
3. Conduct refresher training as a best practice.
4. Allow contractors to maintain flexibility in scheduling training sessions.
5. Require training to be conducted in the appropriate language and literacy level of each worker.
6. Require training to be tailored to the construction industry and include bystander intervention.
7. Require that documentation of training include sign-in sheets with signatures and printed names.

Section III describes the Labor Commissioner's recommendations for legislation that may be considered to implement a construction-specific standard and to further encourage contractors to take a proactive approach to harassment and discrimination prevention in the construction industry. These recommendations include:

1. Amendments to the Government Code to incorporate minimum training standards for construction
2. Amendments to the Business and Professions Code to tie training compliance to contractors' state licensure renewal
3. Amendments to the Public Contract Code and Labor Code to require training compliance in public contracting

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STAKEHOLDER INPUT

To assist the Division of Labor Standards Enforcement, also known as the Labor Commissioner's Office (LCO), in developing recommendations for the prevention policy and training standards, Labor Code section 107.5 required the Director of Industrial Relations to convene an advisory committee. Accordingly, the Director convened an advisory committee, which included representatives from: recognized or certified collective bargaining agents that represent construction workers, construction industry employers or employer associations, labor-management groups in the construction industry, nonprofit organizations that represent women in the construction industry, the LCO, the Division of Occupational Safety and Health (DOSH), and the Department of Fair Employment and Housing (DFEH).¹ The advisory committee met on October 12, November 9, and November 30, 2020, providing input at these meetings and via correspondence. The LCO also had a series of independent conversations with stakeholders in the advisory committee.

These discussions resulted in the guiding principles for policies and recommended minimum training standards set forth in Sections I and II. Although the advisory committee process was collaborative, some advisory committee members expressed concerns and disagreement about various recommendations. The Labor Commissioner notes these differing views in the report below.

SECTION I. GUIDING PRINCIPLES FOR HARASSMENT & DISCRIMINATION PREVENTION POLICY IN THE CONSTRUCTION INDUSTRY

The Labor Commissioner recognizes that government, industry, unions, and advocacy groups have done significant work in recent years to identify effective harassment and discrimination prevention policies. Specifically, California's Fair Employment and Housing Council (FEHC) enacted regulations in 2016 listing the required components of an anti-harassment policy at 2 CCR § 11023.² Further, of particular use and relevance is the Equal Employment Opportunity Commission's (EEOC's) June 2016 report from Co-Chairs Chai R. Feldblum and Victoria A. Lipnic on the Task Force Study of Harassment in the Workplace³. The Labor Commissioner has pulled from multiple sources and integrated advisory committee members' construction-industry-specific experience to adopt the following guiding principles and best practices for the development of anti-discrimination and harassment training and policy for the construction industry.

Recommendation 1: Employers Should Expand Safety to Include Respectful Worksites

Sexual harassment and discrimination are safety concerns, particularly in the construction industry, for two main reasons. First, the construction industry model creates a high-risk environment for

¹ Along with state agencies (LCO, DFEH, DOSH, Division of Apprenticeship Standards), the advisory committee included representatives from the following organizations: Associated Builders and Contractors, Inc., Northern California Chapter; Construction Employers Association; International Brotherhood of Electrical Workers, Electrical Training Institute; Northern California Carpenters Regional Council; Northern California Cement Masons Joint Apprenticeship Training Committee; Southern California Coalition of Occupational Safety and Health; Tradeswomen, Inc.; United Contractors; and Women in Non-Traditional Employment Roles.

² The Fair Employment and Housing Council (FEHC) is currently updating 2 CCR §§ 11023 and 11024 to reflect statutory changes in California's harassment prevention training law.

³ Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic (2016): <https://www.eeoc.gov/june-2016-report-co-chairs-select-task-force-study-harassment-workplace>.

harassment, as described below through the risk factors identified by the EEOC, and can therefore be an unsafe environment for harassment victims. Second, construction work itself exposes workers to myriad physical injuries that can be addressed only through vigilant adherence to safety protocols. Harassment and discrimination in the workplace distract from adherence to these protocols and thereby expose workers to additional risk.

A. Harassment and Discrimination in the Construction Industry Pose Significant Threats to Victims and Bystanders

1. Harassment Risk Factors in the Construction Industry Create an Unsafe Environment for Victims

In its June 2016 report, the EEOC identified multiple environmental risk factors that may increase the likelihood of harassment in a specific industry. These include but are not limited to many risk factors present in the construction industry:

- a) **Male-Dominated Workforce.** A 2015 survey found that women’s share of construction trades jobs remained below five percent. (Institute for Women’s Policy Research, Research, Survey Finds Construction Trades Offer Good Wages for Women Workers, but Harassment and Discrimination Still Common (January 2015, <https://iwpr.org/iwpr-general/iwpr-survey-finds-construction-trades-offer-good-wages-for-women-workers-but-harassment-and-discrimination-still-common/>). Recent data suggest that women make up only 3% to 4% of the building trades workforce (Tradeswomen Inc., <https://tradeswomen.org>).
- b) **Inflexible Work Environments.** Workplaces where some workers do not conform to workplace norms, such as “a woman who challenges gender norms by being ‘tough enough’ to do a job in a traditionally male-dominated environment.”
- c) **Isolation.** In isolated workspaces, there may not be witnesses to harassment. A construction worksite creates such an environment.
- d) **Decentralized Workplaces.** Workplaces “marked by limited communication between organizational levels, may foster a climate in which harassment may go unchecked.” The construction industry, where there are often multiple layers of subcontracting, where there is often no “human resources (HR) office” onsite, and where workers and supervisors may not have regular interactions with HR representatives may foster a lack of awareness on how to address workplace harassment issues.
- e) **“High-Value” Employees.** Senior management may be reluctant to challenge “high-value” employees. In 2014, the turnover rate among construction employees was 20%, and, among construction employees age 25 and younger, turnover was 38% (Construction Dive, 5 Concerns Hindering Job Growth in the Construction Field, <https://www.constructiondive.com/news/5-concerns-hindering-job-growth-in-the-construction-field/371388/>). With a fluid and transitional workforce, contractors often rely on superintendents, project managers, or forepersons, with company

seniority to handle worksite incidents. Reluctance to challenge these “high-value” employees also promotes a network of the “good old boys.”

- f) **Power Disparities.** In the construction industry, power disparities between workers exist where, for example, forepersons often have the authority to lay off workers on the spot or where apprentices hope for favorable dispatches from the union office. There is also an inherent power disparity between male and female workers on a construction site, especially given the reality that tradeswomen are in the minority on construction sites. It is not uncommon for a tradeswoman to be the only female worker at a construction site. According to the Chicago Women in Trades National Center for Women’s Equity in Apprenticeship and Employment, women entering the construction field strive for acceptance and inclusion in male camaraderie and do not want to be labeled as “whiners” or “complainers.” Thus, it is especially hard for women, who may find the “locker-room” culture of a construction site hostile, unwelcoming, uncomfortable, or inappropriate for a workplace, to ask for it to change (#MeToo in Traditionally Male-Dominated Occupations: Preventing and Addressing Sexual Harassment, http://womensequitycenter.org/wp-content/uploads/2017/10/Sexual-Harassment-Best-Practice_Revision2.pdf). In addition to the power disparities between people of different gender at a worksite, there is a power disparity between journey-level workers and apprentices at a construction site. Apprentices require journey-level workers’ supervision and approval in order to complete their onsite training. This onsite hierarchy may reduce an apprentice’s willingness to come forward to report a hostile work culture for fear of retaliation and not completing the required training hours to complete the apprenticeship program.

The construction industry is subject to the above risk factors, which can foster abusive environments when left unmitigated. Indeed, a 1999 U.S. Department of Labor study found that 88% of women in the construction industry have reported experiencing sexual harassment at work (U.S. Department of Labor Advisory Committee on Occupational Safety and Health, *Women in the Construction Workplace: Providing Equitable Safety and Health Protection* (June 1999), <https://www.osha.gov/advisorycommittee/accsh/products/1999-06-01>).⁴

⁴ The Labor Commissioner notes that this data was collected more than twenty years ago and urges the legislature to gather more data. Recent surveys and litigation indicate that harassment in the construction industry remains a pervasive problem. In 2018, in an Engineering News-Record survey conducted with 1,248 respondents at construction-sector workplaces, survey results indicated the extent of the construction industry’s problem, with some 66% of respondents reporting that they have faced sexual harassment or gender bias in the workplace, and nearly 60% saying they have witnessed it (#MeToo in Construction: 66% Report Sexual Harassment in ENR Survey, <https://www.enr.com/articles/45452-metoo-in-construction-66-report-sexual-harassment-in-enr-survey>). In 2020, New York Attorney General Letitia James announced a landmark \$1.5 million sexual harassment settlement with a construction employer (\$1.5 million sexual harassment settlement with L.I. construction firm: N.Y. AG James, <https://www.nydailynews.com/news/politics/ny-attorney-general-james-settlement-sexual-harassment-construction-20200713-ekoqzqmo3veb5eth5bzy2jhave-story.html>). In an ABC Nightline interview related to the sexual harassment case, former employee Tierra Williams stated: “I had to endure sexual harassment every day,” “[I remember] how my privacy was violated every day, and how every day I woke up sad and depressed that I even had to come here every day and pass by these men that completely violated everything that was my right as a human being. Even fully clothed in front of them, I felt naked” (Women workers put construction industry on notice: Sex harassment will not be tolerated, <https://abcnews.com/US/women-workers-put-construction-industry-notice-sex-harassment/story?id=72221988>).

Whereas many might think of harassment as whistling, unwanted comments, or inappropriate jokes, it can also take the form of physical assault, rape, and even loss of life. A devastating example of the potentially dangerous environment that the construction industry poses to victims of harassment is the 2017 murder of Outi Hicks, who was a black woman and apprentice carpenter. Before her murder, Ms. Hicks had reported to family members that she had been experiencing harassment by a co-worker, Aaron Lopez. This harassment culminated in Mr. Lopez's beating Ms. Hicks to death with a metal pole while they were at work ([#WeAreOutiHicks: The Fight to End Gender-Based Violence in the Construction Sector](https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/weareoutihicks-fight-to-end-gender-based-violence-in-construction-sector/), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/weareoutihicks-fight-to-end-gender-based-violence-in-construction-sector/>).

Ms. Hicks's murder and pervasive harassment in the construction industry show the need to mitigate harassment risk factors in the industry.⁵ These risk factors should be treated in the same manner as other safety threats, as discussed below in Section 3.

2. Harassment and Discrimination on a Construction Site Could Distract from Adherence to Safety Protocols

Jobsite harassment can lead to a dangerous worksite for all. Construction workers are at regular risk of job-related injury. According to the U.S. Department of Labor, out of 4,779 worker fatalities in private industry in calendar year 2019, 1,061 or 20% were in construction—that is, one in five worker deaths in 2019 were in construction (Occupational Safety and Health Administration, Data & Statistics: <https://www.osha.gov/data/commonstats/>). The jobsite becomes more dangerous when a harasser is focused on the victim, the victim is focused on the harasser, and witnesses are uncomfortable and distracted—the workers' vital focus on safety is compromised. As such, it is imperative to the safety of the entire workforce that every worker, supervisor, and manager be given the tools to prevent harassment and stop it when it occurs.⁶

B. Best Practices and Mechanisms for Encouraging a Safe and Respectful Workplace

1. Focus on Safety

A construction site is a dangerous work area. Each jobsite is filled with numerous hazards that threaten construction site safety and can result in injuries and fatalities. It is common for construction contractors to hold safety meetings to discuss how hazards arise, how to avoid them, and what steps workers should take to implement corrective actions. As discussed, harassment directly impacts jobsite safety. Thus, harassment and discrimination prevention training should be imbedded into the construction industry's safety meetings on jobsite hazards and safety.

⁵ One committee member commented that the issues identified in the EEOC's 2016 report may have already been mitigated by SB 1343, SB 778, and SB 530. The member commented that further action is not justified without data of the efficacy of SB 1343, SB 778, and SB 530.

⁶ One committee member commented that data is needed to support a conclusion that workers harassed at a jobsite are more likely to be injured.

2. Focus on Creating a Respectful Workplace

The EEOC has found that workplace incivility is often antecedent to workplace harassment “as it creates a climate of ‘general derision and disrespect’ in which harassing behaviors are tolerated” (EEOC June 2016 Report at 55). With respect to workplace civility training, the EEOC specifically found:

Incivility can also sometimes represent covert manifestations of gender and racial bias on the job [213]. In other words, facially neutral, uncivil behaviors may actually be rooted in animus against members of a protected class and may subtly contribute to a hostile work environment [214]. We fully recognize that Title VII was not meant, and should not be read, to be “a general civility code for the American workplace.” But promoting civility and respect in a workplace may be a means of preventing conduct from rising to the level of unlawful harassment.

Workplace civility trainings focus on establishing expectations of civility and respect in the workplace, and on providing management and employees the tools they need to meet such expectations. The training usually includes an exploration of workplace norms, including a discussion of what constitutes appropriate and inappropriate behaviors in the workplace. The training also includes a heavily skills-based component, including interpersonal skills training, conflict resolution training, and training on effective supervisory techniques.

The beauty of workplace civility training is that it is focused on the positive—what employees and managers should do, rather than on what they should not do. In addition, by appealing to all individuals in the workplace, regardless of social identity or perceived proclivity to harass, civility training might avoid some of the resistance met by interventions exclusively targeting harassment. (EEOC June 2016 Report at 55)

Feedback received from advisory committee members indicated that although workplace civility and respect are interrelated concepts, framing the training as “workplace civility” may be a less familiar term in the construction industry. Construction workers may perceive “civility” training as etiquette training on politeness at a jobsite. In contrast to “civility,” “respect” is a readily familiar concept in the construction industry, as demonstrated by various construction-specific campaigns and training, such as the Ironworkers “Be the One Guy” and “RISE UP” (Respect, Inclusion, Safety, and Equity in the Construction Trades). The Labor Commissioner recommends as a best practice the integration of workplace civility training in the construction industry, yet framing and emphasizing this training as creating respectful workplaces, rather than calling it “civility training.”

3. Include Bystander Intervention

According to the EEOC’s findings, “Bystander intervention training has long been used as a violence prevention strategy. . . . The training has been shown to change social norms and empower students to intervene with peers to prevent assaults from occurring” (EEOC June 2016 Report at 57). The EEOC noted that most bystander intervention training uses at least four strategies:

- Create awareness: enable bystanders to recognize potentially problematic behaviors.

- Create a sense of collective responsibility: motivate bystanders to step in and take action when they observe problematic behaviors.
- Create a sense of empowerment: conduct skills-building exercises to provide bystanders with the skills and confidence to intervene as appropriate.
- Provide resources: provide bystanders with resources they can call upon and that support their intervention. [223]

In the construction industry specifically, the Ironworkers International Union has created a training program, “Be That One Guy,” to highlight the safety issues surrounding bullying and harassment at construction jobsites and incorporating training on bystander intervention to train individual members and leadership to step up and intervene appropriately to address worksite discrimination and abuse. The program specifically recognizes the safety concerns for the entire workforce presented by harassment and seeks to help participants learn how to defuse hostile situations and gain the confidence to be able to react when they see harassment. The Labor Commissioner recommends the adoption of a policy that includes bystander intervention and recommends that such program training be integrated into the minimum training standards in the construction industry.

Recommendation 2: Leadership Must Uphold Harassment-Free Behavior

The EEOC emphasized that workplace culture—which is most influenced by leadership and accountability—has the greatest impact on whether harassment flourishes or diminishes. The EEOC stated:

Organizational cultures that tolerate harassment have more of it, and workplaces that are not tolerant of harassment have less of it. This common-sense assumption has been demonstrated repeatedly in research studies. If leadership values a workplace free of harassment, then it will ensure that harassing behavior against employees is prohibited as a matter of policy; that swift, effective, and proportionate responses are taken when harassment occurs; and that everyone in the workplace feels safe in reporting harassing behavior. Conversely, leaders who do not model respectful behavior, who are tolerant of demeaning conduct or remarks by others, or who fail to support anti-harassment policies with necessary resources, may foster a culture conducive to harassment. (EEOC June 2016 Report at 32)

Here, the advisory committee members have stressed that training alone is ineffective without leadership and organizational commitment to respond quickly and appropriately to situations with harassment and discrimination. Specific construction-oriented training for apprentices, for example, has backfired: although apprentices are trained on anti-harassment and anti-discrimination policies, superiors and “good old boys” are not adopting the training recommendations through leadership or accountability.⁷ Thus, in addition to implementing minimum training standards for management to cultivate exemplary leadership and accountability around harassment, training must also focus on encouraging buy-in from owners and leadership. Leadership buy-in includes project owners and public agencies. Pilot training programs in Oregon and Washington were driven by project owners, which helped ensure the universality of training across all workers at the project site.

⁷ One committee member commented that this is unsupported by data.

To help promote buy-in, the EEOC identified business and profitability reasons for creating a safe workplace free of harassment. These include reduced direct costs associated with litigation and awards for harassment cases, along with lower indirect costs related to productivity, attendance, workplace diversity, and retention. These are in addition to the workplace safety costs described above.

One committee member stated that in the construction industry, small businesses and subcontractors sometimes say that their method for ensuring a workplace free of harassment is simply to exclude women and minorities, by declining to hire them. However, these exclusionary hiring practices are illegal and may be subject to potential litigation. Further, even for such contractors, training could emphasize the likelihood that their workforce will interact daily with a general contractors' workforce and the importance of exercising behavior conducive to respectful workplaces. If a subcontractor cannot fit into a workplace culture free of harassment, it might have financial and reputational consequences that could result in the loss of contracting opportunities, etc. Construction industry leaders could also encourage buy-in from contractors by creating contractor recognition standards and award policies.

As a best practice, harassment and prevention policies and training standards should include identifying benefits for all stakeholders, taking into account the realities of big general contractors as well as small businesses and subcontractors.

Recommendation 3: Training Must Be Tailored Specifically to the Construction Industry

The EEOC recognized that much of the harassment and discrimination prevention training promoted over the past 30 years has been focused too heavily on generally avoiding legal liability and has been ineffective in preventing workplace harassment. The EEOC found that “using examples and scenarios that realistically involve situations from the specific worksite, organization, and/or industry makes the compliance training work much better than if the examples are foreign to the workforce” (EEOC June 2016 Report at 50). The Labor Commissioner recommends that any minimum training in the construction industry use materials that are tailored specifically to the experiences of that workforce and industry.

Recommendation 4: Policy Cannot Be Plaintiff Driven

The EEOC report found:

The least common response of either men or women to harassment is to take some formal action—either to report the harassment internally or file a formal legal complaint. Two studies found that approximately 30% of individuals who experienced harassment talked with a supervisor, manager, or union representative. In other words, based on those studies, approximately 70% of individuals who experienced harassment never even talked with a supervisor, manager, or union representative about the harassing conduct. [61]

The incidence of reporting appears to be related to the type of harassing behavior. One study found that gender-harassing conduct was almost never reported; unwanted physical touching was formally reported only 8% of the time; and sexually coercive behavior was reported by only 30% of the women who experienced it. [62]

In terms of filing a formal complaint, the percentages tend to be quite low. Studies have found that 6% to 13% of individuals who experience harassment file a formal complaint. [63] That means that, on average, anywhere from 87% to 94% of individuals did not file a formal complaint.

Employees who experience harassment fail to report the behavior or to file a complaint because they anticipate and fear a number of reactions—disbelief of their claim; inaction on their claim; receipt of blame for causing the offending actions; social retaliation (including humiliation and ostracism); and professional retaliation, such as damage to their career and reputation. [64]

The fears that stop most employees from reporting harassment are well-founded. One 2003 study found that 75% of employees who spoke out against workplace mistreatment faced some form of retaliation. [65] Other studies have found that sexual harassment reporting is often followed by organizational indifference or trivialization of the harassment complaint as well as hostility and reprisals against the victim. [66] Such responses understandably harm the victim in terms of adverse job repercussions and psychological distress. [67] Indeed, as one researcher concluded, such results suggest that, in many work environments, the most ‘reasonable’ course of action for the victim to take is to avoid reporting the harassment. (EEOC June 2016 Report at 16-17)

Consistent with the EEOC’s findings and based on comments from the advisory committee, the Labor Commissioner believes that victims often do not come forward with complaints to DFEH and EEOC because they are blackballed and may risk their entire career by doing so. A system that principally relies on plaintiff reporting to DFEH or EEOC does not work well without supplemental prevention policies. The Labor Commissioner believes that this reporting issue can be alleviated by implementing prevention policies that foster a respectful workplace culture and a bystander intervention model, as discussed above, and policies that include robust reporting and investigating mechanisms, discussed below. Employers must proactively monitor the work environment, communicate consistent messages of harassment-free commitment, and implement reporting and investigations systems that are swift and appropriate.

Recommendation 5: Employers Must Adopt Robust Reporting and Investigating Mechanisms

DFEH’s Workplace Harassment Prevention Guide for California Employers may be used as a resource and an example of how the construction industry can adopt policies and procedures to ensure robust reporting and investigation of complaints, which include: specialized training for complaint handlers; policies and procedures for responding and investigating complaints; prompt, thorough, and fair investigations; prompt and fair remedial actions (Workplace Harassment Guide for California Employers, <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide-1.pdf>).

The Labor Commissioner recommends adapting DFEH’s guide for the construction industry. Specifically, the advisory committee voiced concern that, apart from DFEH’s guide, contractors do not have enough additional resources or information on how to appropriately handle harassment and

discrimination claims. The Labor Commissioner recommends that any construction-specific harassment and discrimination supervisor training include the steps necessary to take appropriate remedial measures to correct harassing behavior, such as how to conduct an effective workplace investigation of a harassment complaint. Further, such training should be given to all construction employees who are or could be supervising others, such as journey-level workers who might supervise apprentices.

Recommendation 6: Employers Must Adopt Disciplinary Policies That Prohibit Harassing and Discriminatory Conduct

The Labor Commissioner supports the adoption of a prevention policy that unequivocally condemns harassment and discrimination in the workplace and that sets clear expectations that any hostile behavior will not be tolerated. Special attention must be given to ensure that a “zero tolerance” approach to harassing and discriminatory conduct does not result in a one-size-fits-all approach for disciplinary actions. The EEOC noted that although it is critical for employers to communicate that absolutely no harassment will be permitted in the workplace, the term “zero tolerance” might inappropriately convey a one-size-fits-all approach, in which every instance of harassment is addressed with the same level of discipline. “Accountability requires that discipline for harassment be proportionate to the offensiveness of the conduct. For example, sexual assault or a demand for sexual favors in return for a promotion should presumably result in termination of an employee; the continued use of derogatory gender-based language after an initial warning might result in a suspension; and the first instance of telling a sexist joke may warrant a warning” (EEOC June 2016 Report at 40). A one-size-fits-all approach may “contribute to employee under-reporting of harassment, particularly where they do not want a colleague or co-worker to lose their job over relatively minor harassing behavior—they simply want the harassment to stop” (*Id.*).

The Labor Commissioner agrees that horrendous behavior should be treated differently from an infraction. And though disciplinary actions should not follow a one-size-fits-all approach, the Labor Commissioner supports a policy that holds accountable any individual who instigates or supports harassing and discriminatory conduct. Thus, the concept “zero tolerance policy” should be embraced because it is defined as communicating clear protocols and enforcing real consequences to hold individuals responsible for harassing and discriminatory conduct and a declaration that every instance of harassment or discrimination will be met with appropriate discipline. A focus on accountability and the appropriate discipline for wrongful conduct will also mitigate instances in which leadership or the “good old boys” might simply use termination of a complainant as a way to resolve claims of harassment or discrimination. A disciplinary approach that holds wrongdoers accountable might further encourage reporting of such harassing and discriminatory conduct by victims as well as bystanders.

To determine the appropriate level of discipline, managers should take into account both the behavior and whether it was a manager who carried out or condoned the behavior, as conduct from management sets the tone for workplace culture. In construction, where traditional managers are not necessarily on site, any determination of who qualifies as management should be examined with respect to a low-to-high hierarchy: apprentice, journey-level worker, foreperson or lead, general foreperson, superintendent. Other possible non-office people on some sites are stewards (appointed by the union, not the contractor) and safety officers.

Further, with respect to appropriate disciplinary actions in a solutions-based approach, employers should explore a restorative justice approach, where appropriate. Such an approach serves as an alternative

to traditional retributive justice, where the focus is the punishment of offenders. A restorative justice approach allows employers to focus on the workplace in its totality—exploring ways to restore and reintegrate victims to make them whole, as well as finding ways to rehabilitate wrongdoers so that the offending conduct does not recur (#MeToo and Restorative Justice, https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2019/winter-2019-me-too/metoo-and-restorative-justice/).

In conjunction with taking appropriate disciplinary action, managers should routinely highlight and shed positive light on individuals who engage in respectful conduct and who encourage others to do the same. Such recognition is important for cultivating a respectful work environment, as recognized by “Be That One Guy.” The Labor Commissioner recommends that any training on appropriate disciplinary action include the importance of regular acknowledgment of individuals who exhibit good behaviors.

In sum, the Labor Commissioner agrees that harassment and discrimination prevention policy and training should encourage a solutions-based approach on how to cultivate a respectful worksite culture and that discipline should be tailored to the offense. Such training would provide supervisory workers with the tools for reacting to various instances of harassment and for framing “zero tolerance” as a policy in which harassment and discrimination always meet with discipline.

SECTION II. TRAINING STANDARDS

Feedback from some members of the advisory committee suggested that the minimum training standards for the construction industry already in existence—in Government Code section 12950.1 and implementing regulations—are sufficient at this time. These members expressed that construction is a unique industry, with a seasonally shifting multi-employer workforce, and more time is needed to foster a broader industry consensus on developing clear standards that are feasible for contractors and will contribute to improvements in workplace culture and safety. Other members of the advisory committee expressed support for construction-specific minimum standards and best practices. This section identifies and highlights training standards that should be considered in the construction industry as best practices or as potential requirements for training standards to be implemented through legislation.

Recommendation 1: Best Practice to Use Peer Trainers

Government Code section 12950.1(a)(1) and (3) and implementing regulations in 2 CCR § 11024(a)(9)⁸ provide that the training shall be presented by trainers or educators with knowledge and expertise in the prevention of sexual harassment, discrimination, and retaliation, inclusive of harassment based on gender identity, gender expression, and sexual orientation. Government Code section 12950.1(l)(5)(B) provides the qualifications a trainer must have to provide training on behalf of an apprenticeship program, labor management training trust, or labor management cooperation committee.

In general, to become a qualified trainer under FEHA, an individual must have knowledge drawn from training and experience, as well as the ability to communicate that knowledge, specifically:

⁸ The FEHC is currently in the process of updating section 11024 to reflect statutory changes in Government Code section 12950.1, which includes defining employers of “having 50 or more employees” to “with five or more employees” for the purpose of harassment prevention training law.

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

Further, under 2 CCR section 11024(a)(10)(A), a trainer shall be one or more of the following:

1. "Attorneys" admitted for two or more years to the bar of any state in the United States and whose practice includes employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964, or
2. "Human resource professionals," "harassment prevention consultants," or peer-to-peer trainers with a minimum of two years of practical experience in one or more of the following: a) designing or conducting discrimination, retaliation and harassment prevention training; b) responding to harassment complaints or other discrimination complaints; c) conducting investigations of harassment complaints; or d) advising employers or employees regarding discrimination, retaliation and harassment prevention, or
3. "Professors or instructors" in law schools, colleges or universities who have either 20 instruction hours or two or more years of experience in a law school, college or university teaching about employment law under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964.

In consultation with the advisory committee, the Labor Commissioner determined that the trainer qualifications established under FEHA and its implementing regulations represent the most appropriate minimum standards for use in the construction industry. However, the Labor Commissioner emphasizes the importance of peer-to-peer training as permitted under 2 CCR section 11024(a)(10)(A)(2), and, as a best practice, recommends using a trainer qualification guideline that encourages the use of current or former tradespersons to train construction workers.

The advisory committee and the Labor Commissioner recognize that peer-to-peer training can ensure that the message of the training is not lost because it is delivered by the "wrong" messenger. Construction workers may be more receptive to receiving training from a peer who is familiar with the culture and realities of daily construction work, as opposed to "off-the-shelf" commercial training materials or training by attorneys, in-house human resources officials, or outside consultants who may have never stepped foot on a construction site. The peer-to-peer training should include a "train the trainer" component, which empowers a construction company to take ownership in changing the workplace culture. Further, it may be worth exploring whether current construction safety coordinator positions may be trained and empower those in this position to become allies in the anti-harassment campaign to change jobsite culture.

Note that the Labor Commissioner discourages having direct supervisors as trainers, as it might prevent workers from speaking candidly about their experiences. For example, a tradeswoman might not necessarily feel comfortable openly sharing her experience with her supervisor for fear of being seen as a “complainer” or “whiner” and not “tough enough” for the worksite or culture; or apprentices or trainees might not be comfortable sharing their experiences with a supervising journeyman because they may be concerned about how the journey-level worker will evaluate their job performance, etc.

Additionally, Government Code section 12950.1 (l)(A) currently allows apprenticeship programs to provide the required training under section 12950.1. The Labor Commissioner recommends that, as a best practice, the Division of Apprenticeship Standards (DAS), in consultation with the building and construction trades apprenticeship programs and nonprofit organizations that aim to make construction workplaces more inclusive, adopt a training model that uses peer-to-peer training. Although the Labor Commissioner does not currently recommend peer-to-peer training as the exclusive method for training in the construction industry because it currently lacks any known network of peer trainers, the collaboration between DAS and the various apprenticeship programs could help establish a launching point for a future peer-to-peer training network.⁹

Recommendation 2: Require In-Person Training

Government Code section 12950.1(a)(1) permits an employer to satisfy the training requirement with classroom or other effective interactive training. The Labor Commissioner recommends requiring an in-person training component provided by a trainer (preferably a peer trainer, as discussed above). However, because of the COVID-19 pandemic, this requirement should not become effective until January 1, 2022, at the earliest, or when public health officials deem in-person gatherings safe.

The need for in-person training in the construction industry is dictated by the nature of the work. Construction work on the worksite does not generally involve daily interaction or use of computers. Construction work is generally physically active work. Thus, training for the construction workforce should strive to be interactive and kinesthetic to keep workers engaged. To ensure that workers are engaged and effectively trained, the Labor Commissioner recommends limiting employers’ reliance on computer technologies for training because substituting them for interaction with a trainer in real time would not properly communicate the required subject matter to a largely kinesthetic workforce.

Examples of in-person interactive instruction include pre- or post-training quizzes or tests, small group discussion questions, discussion questions that accompany hypothetical fact scenarios, role playing in brief scenarios and discussion in small groups or by the entire group, or any other learning activity geared toward ensuring interactive participation as well as the ability to apply what is learned to the trainee’s work environment. Although the Labor Commissioner encourages learning exercises that encourage interactive participation, special attention must be given to ensuring that women or minority tradespeople are not singled out as examples of why the training is necessary. Such typecasting and singling out defeats the training objective of fostering a respectful workplace culture.

⁹ One committee member commented that any deviation from current training standards should apply more broadly to all employers, not just to the construction industry.

Audio, video, webinar, and e-learning training methods are best used as supplemental tools in conjunction with in-person instruction. Interactive instruction should include questions that assess learning, skill-building activities that assess the trainee’s application and understanding of content learned, and hypothetical scenarios about harassment and discrimination at the construction jobsite, each with one or more discussion questions.

Although the Labor Commissioner recommends that in-person training be required, the advisory committee expressed concern regarding such a requirement. First, the COVID-19 pandemic and current public health recommendation for social distancing make in-person training infeasible. Second, in-person training requires a significant shift in how training is currently being conducted for large numbers of workers, and the industry would need time to adjust to such a requirement, at least until 2022. Third, committee members stated that many construction workers have developed computer literacy because most people use smartphones. Finally, committee members expressed appreciation for DFEH’s free online training videos, which provide consistent training in multiple languages. The members emphasized that, unlike in-person training, such training videos are cost effective and flexible, allowing contractors and workers to access the videos as their schedule permits.

Even so, given the importance and sensitive nature of the training topic, the Labor Commissioner recommends an in-person training component, as it appears to be the most effective training mode. The Labor Commissioner recognizes that in-person training might not be immediately feasible given the pandemic. As such, an in-person training requirement should not be imposed until January 1, 2022, at the earliest and approval from public health officials is received. Further, consideration should be given to the amount of time needed for the industry to adjust to such a requirement. Until the time comes for in-person training to be feasible, the Labor Commissioner recommends that contractors strive to provide effective interactive training.

Recommendation 3: Best Practice to Conduct Refresher Training

Government Code section 12950.1 (a) requires a specified employer with five or more employees to provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California and, after that date, once every two years. Section 12950.1, subdivision (e), reiterates that training and education required by section 12950.1 is intended to establish a minimum threshold and should not discourage or relieve any employer from the responsibility to give longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination as part of meeting its obligation to take all the reasonable steps necessary for preventing and responding to harassment and discrimination.

Based on the discussion with the advisory committee, it seems that sexual harassment and prevention training is largely perceived as a “check the box” activity, where employers give “off-the-shelf” training solely for the purpose of compliance. Implementation of a cultural change to one in which the entire workforce—not just victims—is collectively working to achieve a safe and respectful environment requires the integration of sexual harassment and prevention training into regular day-to-day work.

The advisory committee recognizes that frequent refresher training would be beneficial in the construction industry but does not recommend legislating frequent training that exceeds the existing requirements. The Labor Commissioner recommends that, as a best practice, refresher training be part of safety meetings or “tailgates,” in which workers are assigned daily tasks. The refresher training should remind workers about available resources for reporting harassment and discrimination and include local, state, and national resources for victims of sexual harassment and violence, such as community-based resources, comprising rape crisis centers, counseling services, mental health supports, and the advice hotline information for workers interested in a safe space to discuss their concerns and circumstances.

Recommendation 4: Maintain Flexibility in Scheduling Training

Government Code section 12950.1(a) requires a specified employer with five or more employees to provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees. Section 12950.1(a) specifies that the training may be completed in shorter segments, as long as the applicable hourly total requirement is met.

The advisory committee recommends keeping this standard in place without modification. The Labor Commissioner understands that employers vary depending on business size, worksite size and location, and work schedules. The Labor Commissioner recommends retaining the scheduling flexibility provided for by FEHA.

Recommendation 5: Require Training to Be Conducted in the Appropriate Language and at the Proper Literacy Level

The Labor Commissioner recommends requiring the sexual harassment training to be conducted in the language and at the literacy level that are appropriate for an employee. The construction industry has a racially and educationally diverse workforce, with workers from immigrant communities who might lack English proficiency and have varying cultural backgrounds. Employers are encouraged to ensure that trainers adapt their materials and communication strategies so that they can reach their target audience.

Recommendation 6: Require Construction-Tailored Training and the Inclusion of Bystander Intervention

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

The Labor Commissioner recommends requiring that the training content equip workers with the appropriate language and tools for a worker to report potential discrimination to a supervisor or foreperson

and for a foreperson or supervisor to speak with the affected parties. Scenarios and examples used for the training must be tailored to the realities of the construction industry. Practical examples should include construction site examples, as opposed to general examples related to work in an office setting. Further, as the workforce is male dominated, the training should include examples or reminders that sexual harassment need not be based on sexual desire and can include sexual jokes, sex-based horseplay, innuendo and the like, even if no women are present. As a resource, the training content may provide workers with scripted language for them to adapt. The training should also portray language that is and is not appropriate for the workplace and provide specific examples.

Further, as discussed in Section I, it appears that bystander intervention training is effective, so it should be included as a part of a minimum standard for construction industry training. The advisory committee, however, does not recommend any changes in current training requirements without additional time to fully develop an industry policy and training standard. Although additional time to develop specific training content may be useful, the Labor Commissioner recognizes that the effectiveness of bystander intervention training is well established. Therefore, bystander intervention training should be a part of the minimum training requirements in the construction industry.

The Labor Commissioner recommends exploring the bystander intervention model developed by the Bureau of Labor and Industries, the Oregon Department of Transportation's (BOLI-ODOT) Respectful Workplaces Project ("Project")¹⁰. In January 2015, the BOLI-ODOT Highway Construction Workforce Development Program, in collaboration with Metropolitan Alliance for Workforce Equity, Oregon Tradeswomen, and Construction Hope, held ten focus groups with stakeholders in the construction industry that included workers, from new apprentices to seasoned journey-level workers, and leaders, from foremen to superintendents and company owners. The focus groups indicated that a bystander intervention model intended to prevent harmful behaviors may be effective in the industry.

The Project focused on addressing increasing retention of diverse workers by reducing and preventing bullying, hazing, and harassment in construction. In doing so, it focused on four categories in a top-down and bottom-up approach that included: worksite awareness, worker education and organizational training, bystander training, and opportunities for voice and social support. In October 2016, the Project launched its bystander intervention training with 14 tradeswomen. The course was two hours, consisting of training for 1.5 hours and 30 minutes for feedback and assessment. Feedback from the training indicated that trainees appreciated the interactive training for trades workers.

Further, as discussed in Section I, another model whose adoption is recommended by the Labor Commissioner is the "Be That One Guy" program created by the Ironworkers International Union. The Ironworkers' program is multifaceted. It includes implementing dedicated town hall meetings designed to break the silence and provide an open forum for honest discussions for employers and workers. The program includes bystander training and intervention best practices in key training programs across the organization, such as new officers, apprenticeship coordinators, shop stewards and safety director training. The bystander training emphasizes that harassment is a safety issue and incorporates it into mandatory safety training and the Ironworker Safety Director Training Course. The novelty in the "Be That One Guy" program is that it is a curriculum for diversity training of the

¹⁰ ODOT/BOLI Highway Construction Workforce Development Program Final Report (July 2015-June 2017): https://www.oregon.gov/ODOT/Business/OCR/SiteAssets/Pages/Workforce-Development/ODOT_BOLI_Highway_Construction_Workforce_Development_Program_2017.pdf.

Ironworker members that goes beyond the typical “sexual harassment” training. Although the program draws attention to the role of female ironworkers and the unique challenges they face on the jobsite, the program was created to foster camaraderie and support among workers by emphasizing that all workers deserve respect. The program is not focused on lecturing male ironworkers but, rather, on commending ironworkers and trades people for using the safety mantra “See something! Say something!” for speaking up when they witness harassment, bullying, or intimidation.

RISE Up (Respect, Inclusion, Safety, and Equity in the Construction Trades) is a respectful workplace campaign and training model that also uses a bystander intervention model to prevent bullying and harassment. The program was developed through in-depth focus groups of women and minorities in the trades in the Seattle area. RISE Up recognizes that it is impossible to “outlaw bias” and the “blame and shame management” does not motivate workers to change their behavior or worksite culture. RISE Up recognizes that to be effective, a program must be multidimensional, inclusive, and measured and cover more than just women and race. To do so, it has created a comprehensive package for training that includes: marketing and jobsite materials, mentorship programs, organizational assessments, creation of a jobsite team, and third-party incident reporting services. RISE Up has been scaled up in the Seattle area with public owners, such as the City of Seattle and Sound Transit, that require training on their jobsites.

In addition to bystander training, the Labor Commissioner recommends exploring the supervisory training created by the BOLI-ODOT Respectful Workplaces Project. With the assistance of the University of North Carolina, the Project also developed a training workshop for supervisors in the highway construction trade. The workshop’s goal was to create a training program about how supervisors can cultivate more respectful and supportive workplaces for apprentices. Specifically, the training intervention was designed to decrease the prevalence of aggressive, counterproductive workplace behaviors, including workplace bullying, discrimination, and mistreatment/harassment on the job by supervisors. The Project’s research into the working environment for apprentices in the highway construction trades revealed that harassment, discrimination, and aggressive workplace behavior was widespread in the highway construction trades, especially toward women and people of color. Supervisors and fellow (more senior) coworkers were the typical perpetrators. Additionally, supervisors and apprentices have had little to no training on harassment, discrimination, or how to create more respectful/supportive workplaces. Based on this research, the Project developed a 4.5-hour training workshop for supervisors consisting of three modules: (1) Situational Awareness: Recognizing Counter-Productive Workplace Behaviors; (2) Self and Other Awareness: Cultivating Trust and Supportive Workplaces; and (3) Resolving Conflict: How to Address and Stand up to Bullying. The workshop used a combination of diverse instructional components, including lectures, assessments, break-out discussions, and experiential activities to assist with learning.

The Labor Commissioner recommends that training content specific to the construction industry be developed by the Department of Fair Employment and Housing (DFEH). However, the Labor Commissioner notes that DFEH will require additional resources and funding to develop training content tailored to the construction industry.

Recommendation 7: Documentation on Training Should Include Sign-in Sheets with Signatures and Printed Names

Title 2 CCR §11024(b)(2) requires that employers maintain documentation on training to track compliance for a minimum of two years, including but not limited to the names of the supervisory

employees trained, the date of training, the sign-in sheet, 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. Documentation on required training is necessary to ensure the transparency and accountability of training programs. The Labor Commissioner agrees that the existing recordkeeping requirements are sufficient to ensure transparency and accountability but emphasizes that any “sign-in sheets” must contain the signature and printed names of employees receiving training, not simply a list of employees who purportedly attended the training. This is necessary to mitigate the potential for falsification of compliance records, which has been a concern raised in the agricultural and janitorial training contexts.

SECTION III. LEGISLATION

Several members of the advisory committee have expressed that, because minimum training standards outlined in Government Code section 12950.1 and implementing regulations are currently sufficient for compliance purposes in the construction industry, the best way forward is to monitor how to tailor the Government Code’s minimum standards to the construction industry before additional legislation or mandates are proposed. The reason for this is because employers have until January 1, 2021, to comply with Senate Bill 1343’s amendments to the Fair Employment and Housing Act (mandating that employers with five or more employees provide sexual harassment prevention training and expanding the requirement to include nonsupervisory as well as supervisory employees).

The Labor Commissioner notes the advisory committee’s concerns but believes that some preliminary amendments to the Government Code’s minimum training standards should be implemented for the construction industry. The Labor Commissioner also makes the following recommendations for further strengthening compliance with the training requirements in the construction industry. If any of the below recommendations are pursued, it would require fuller vetting with impacted agencies.

Recommendation 1: Amend Government Code to Incorporate Minimum Training Standards in Construction

In consultation with DFEH, the Labor Commissioner recommends making some general amendments to the training standards as they apply to employers in all industries and some additional amendments to the Government Code to implement construction-specific training standards. The basis for general amendments for all industries include DFEH’s support that such changes will make training more effective. These general amendments further alleviate committee member concerns that the construction industry is targeted for compliance purposes.

The Labor Commissioner recommends the following amendments to the Government Code:

- Amend Government Code section 12950.1 as follows: (1) adding a recommendation that training be tailored to the employer’s industry and worksite, (2) moving section 12950.2 into 12950.1 and making bystander training a required component, (3) moving subdivision (l) into new section 12950.4; and

- Adding Government Code section 12950.4 to add training standards specific to the construction industry, to include the following requirements, as discussed in Section II:
 - training should be conducted in-person, effective no sooner than January 1, 2022, at the earliest, and when public health officials deem in-person gatherings safe,
 - training should be conducted in the appropriate language and literacy level for an employee,
 - training content must be tailored to the construction industry and include bystander intervention.

Recommendation 2: Amend Business and Professions Code Tying Training Compliance to Renewal of a Contractor’s State License

California’s Contractors State License Board (CSLB) licenses and regulates contractors in 44 classifications that constitute the construction industry. The state has about 290,000 contractors¹¹. The CSLB’s mandate is to protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public, including contractor employees, in matters related to construction.

As discussed above in the policy section, contractor compliance with preventing harassment and discrimination is an important part of promoting safety on the jobsite. The most direct and effective way to ensure compliance with sexual harassment and discrimination prevention policy and training requirements in the construction industry is make it a requirement for maintaining a license with the CSLB. The Labor Commissioner recommends amending Business and Professions Code section 7125.5 to be effective no sooner than 12 months after the enactment of Government Code section 12950.4 (outlined above). This staggered implementation is designed to give the construction industry time to come into compliance with the minimum training standards requirements.

It is noted that several members of the advisory committee raised concerns related to this recommendation—in particular, that this method of enforcement is far too punitive for contractors and designed to target the construction industry. Members voiced that more time is needed to develop a broader industry consensus before this level of enforcement is imposed. Other members of the committee voiced support for this recommendation as a mechanism for ensuring higher compliance with training laws.

The CSLB was not a member of the DIR’s advisory committee. Although the Labor Commissioner consulted with the CSLB while developing this legislative recommendation, the Labor Commissioner encourages the legislature to receive further input and feedback from the CSLB related to this recommendation before any further legislative action.

¹¹ Data from CSLB’s website indicated that as of February 1, 2021, the state had 282,335 total contractors, of which, 229,654 had active licenses (<https://www.cslb.ca.gov/>).

Recommendation 3: Amend the Public Contract Code to Require Training Compliance by Public Contracting

As discussed, a guiding principle in prevention policy is to encourage leadership buy-in for harassment and discrimination prevention training. Changing the worksite culture regarding harassment and discrimination prevention must start at the top and include project owners and public agencies. The Public Contract Code (PCC) governs the basis of contracts between most public entities in California and their contractors and subcontractors. PCC section 2010(b) currently requires contractors who submit a bid or proposal to a state agency for contracts of \$100,000 or more to certify under penalty of perjury that they are in compliance with the California Fair Employment and Housing Act (Chapter 7, commencing with Section 12960, of Part 2.8 of Division 3 of Title 2 of the Government Code). Section 12960 of the Government Code governs procedures for the prevention and elimination of unlawful employment practices. The Labor Commissioner recommends amending PCC section 2010(b) to include compliance with FEHA's harassment and discrimination prevention training standards, found in Government Code section 12940 et seq.

The Labor Commissioner further recommends amending PCC section 2500 governing the use of project labor agreements. Currently, section 2500(a)(1) requires a project labor agreement to include an agreement prohibiting discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for a project. The Labor Commissioner recommends amending this section to include requiring compliance with FEHA's harassment and discrimination prevention training standards, commencing with Government Code section 12940. The Labor Commissioner encourages the legislature to receive further input and feedback from impacted agencies related to this recommendation before any further legislative action.

Recommendation 4: Amend Labor Code Require Training Compliance by Public Works Contracting

Consistent with the recommendations above to amend the Public Contracts Code governing construction contracts with public agencies, the Labor Commissioner recommends amending Labor Code section 1726 requiring public agencies on public works projects to recognize a contractor's compliance with FEHA's harassment and discrimination prevention training standards, commencing with Government Code section 12940, and FEHA's procedures for prevention and elimination of unlawful employment practices, commencing with section 12960. Further, Labor Code section 1771.4 (a)(1) should be amended to include a requirement that the call for bids and contract documents for public works projects shall specify that contractors must comply with FEHA's harassment and discrimination prevention training standards, commencing with Government Code section 12940, and FEHA's procedures for prevention and elimination of unlawful employment practices, commencing with section 12960. The Labor Commissioner encourages the legislature to receive further input and feedback from impacted agencies related to this recommendation before any further legislative action.

Respectfully submitted,

Lilia García-Brower

California Labor Commissioner