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CALIFORNIA APPRENTICESHIP COUNCIL

INITIAL STATEMENT OF REASONS

Equal Opportunity in Apprenticeship

CALIFORNIA CODE OF REGULATIONS
TITLE 8, CHAPTER 2, SUBCHAPTER 1
SECTION 201, et seq.

Introduction

The California Apprenticeship Council (CAC) and the Division of Apprenticeship Standards (DAS), both parts of the Department of Industrial Relations (DIR), oversee and regulate apprenticeship programs in the building and construction trades. The CAC is responsible for adopting regulatory standards to govern the approval and operation of apprenticeship programs and ensure equal opportunity in apprenticeship. Among other responsibilities, DAS approves, evaluates, and withdraws state approval of apprenticeship programs in accordance with CAC's regulations and the provisions of the Shelley-Maloney Apprentice Labor Standards Act of 1939 (Lab. Code § 3070, et seq.). DIR's director, as ex officio administrator of apprenticeship (Lab. Code § 3072), investigates complaints against apprenticeship programs, holds hearings on those complaints, and issues determinations.

Problem Statement

The building and construction trades are dominated by men and have historically excluded not only women, but also minorities and people with disabilities. In U.S. construction and extraction occupations in 2021, 96.1 percent of workers were men and 87.2 percent were white.[1] Registered apprentices in California's construction industry are more diverse racially; in 2017, 68.6 percent of apprentices were not white. However,

[1] U.S. Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey," accessed August 22, 2022, https://www.bls.gov/cps/cpsaat11.htm.

only 2.5 percent were women.[2] To attract more women, both the trades themselves and the apprenticeship programs that feed into them must become more welcoming to women.

In 2018, California's legislature passed Assembly Bill (AB) 2358 (Ch. 675, Stats. 2018) to strengthen the state's commitment to prohibiting discrimination and ensure equal opportunity in apprenticeship for the building and construction trades specifically. AB 2358, codified as Labor Code section 3073.9, prohibits discrimination based on certain characteristics with regard to acceptance into, or participation in, any construction trade apprenticeship program. AB 2358 further requires such programs to develop and implement procedures to ensure that apprentices are not harassed or discriminated against, such as providing antiharassment and antidiscrimination training, establishing procedures for investigating and resolving complaints, and maintaining records that demonstrate compliance with AB 2358.

AB 2358 expressly authorizes the CAC to issue regulations to implement the statute. Doing so is not required but is necessary to resolve uncertainty created by the statutory antidiscrimination mandate. The proposed regulations would instruct programs and employers in how to fulfill their obligations under AB 2358, providing managers the certainty they need to make operational decisions. Specific procedures for investigating complaints would facilitate investigation, enable a program to know what to expect from an investigation, and ensure the reliability of findings. Programs would receive instruction in diversifying their pool of apprentices through outreach, recruitment, and selection. Specific procedures for orientation and training would also provide necessary guidance for apprenticeship programs.

Specific Purposes and Rationales

Section 201 (Amended)

Existing Section 201 describes the process for filing an apprenticeship complaint with the administrator of apprenticeship when the complaint is not an appeal of discipline. The proposed amendment to subsection (a) specifies that a complaint alleging a violation of AB 2358 will be processed in accordance with new Section 201.1. This amendment is necessary to distinguish the process tailored for AB 2358 complaints from the general process and to clarify which process applies to complaints of discrimination. Also, the reference and authority sections are amended to include Labor Code section 3073.9.

[2] Division of Apprenticeship Standards, "Apprenticeship: Keeping California's Workforce Healthy," 2017 Legislative Report, accessed August 16, 2022, https://www.dir.ca.gov/das/DAS_annualReports.html.

Section 201.1 (New)

This proposed new section would establish the process for filing a complaint alleging a violation of AB 2358, as well as procedures under which the administrator of apprenticeship would investigate the complaint and the DAS Chief could evaluate a program suspected of violating the statute. These procedures are necessary to implement the requirement that the administrator of apprenticeship and DAS determine whether apprenticeship programs have complied with AB 2358. (Lab. Code § 3073.9(b) and (i).)

Subsection (a) provides that any interested person, including the administrator of apprenticeship, may file a discrimination complaint. The complaint process is a critical mechanism for enforcing AB 2358's protections because complaints alert the administrator and DAS to potentially discriminatory practices. It is necessary to specify that the administrator may file a complaint on their own initiative to ensure that the administrator can act immediately upon receiving information about potential discrimination without waiting for a complaint to be filed.

Subsection (b) requires that a complaint be filed within 300 days of the alleged violation, tracking the federal statute of limitations for discrimination complaints. (42 U.S.C. § 2000e-5(e)(1).) A statute of limitations ensures that apprenticeship programs are not vulnerable to stale claims. Providing a longer filing period is one reason for distinguishing the process for discrimination complaints from the general process of Section 201, under which a complaint must be filed within 30 days.

Subsection (c) authorizes the administrator of apprenticeship or their representative to investigate discrimination complaints and hold related hearings in accordance with Section 202. The amendments need not describe investigation procedures because those detailed in existing Section 202 are adequate.

Subsection (c) also authorizes the administrator of apprenticeship to direct the DAS Chief to evaluate the apprenticeship program in accordance with Labor Code section 3073.1, requiring the administrator to explain their reasons in a written order. The requirement of a written order serves to put the program on notice of the impending audit.

Subsection (d) authorizes the DAS chief to independently initiate an evaluation in accordance with Labor Code section 3073.1 and/or a deregistration proceeding in accordance with Section 212.4 based on information that an apprenticeship program is failing to comply with AB 2358. Because the chief has a narrower purview than the administrator (who is DIR's director) and may thus be able to respond more quickly to enforce AB 2358's protections, this provision makes prompt enforcement action more likely. The chief's authority is conditioned on notice to the program, the means and

content of which are specified, and consideration of a response submitted within 30 days of notice. These provisions guarantee due process for apprenticeship programs.

Subsection (e) makes clear that the regulation does not limit the DAS chief's authority to conduct program evaluations under Labor Code section 3073.1. This provision ensures that evaluations prompted by suspicion of potential violations of AB 2358 are no less rigorous than those undertaken for other reasons.

Section 206 (Amended)

Existing Section 206 describes the process for approval and registration of an apprentice agreement, which establishes a relationship between an apprentice and an apprenticeship program. The proposed amendments would add new subsection (c), which sets forth the conditions and procedures under which DAS may suspend a program's registration of new apprentice agreements, preventing an apprenticeship program that is suspected of failing to comply with legal mandates from taking on new apprentices. The amendments are necessary to implement the general mandate that DAS "foster, promote, and develop the welfare of the apprentice and industry" (Lab. Code § 3073(a)), as well as AB 2358's requirement that DAS prevent discrimination and harassment in apprenticeship. Suspension protects potential applicants from discrimination and prevents them from wasting time in applying to a program whose registration is in question. Suspension also prevents formation of new apprentice agreements that could complicate the process of deregistering the program should deregistration be necessary.

Subsection (c)(1) authorizes DAS to suspend a program's registrations of new apprentice agreements by providing written notice of the reasons for the suspension to the program sponsor according to specified procedures. This amendment enables DAS to take necessary steps to fulfill the above mandates and ensures that an affected program receives due process.

Subsection (c)(2) automatically lifts the suspension if DAS does not initiate deregistration of the program within 45 days. This amendment, modeled after federal regulation 29 C.F.R. § 30.15 and the CA Labor Code, encourages DAS to proceed with investigation and enforcement expeditiously and ensures that, if DAS pursues no further action, an affected program will regain its ability to register new apprentices.

Subsection (c)(3) sets forth the conditions under which a suspension not automatically lifted under subsection (c)(2) remains in effect. First, a final decision on deregistration ends a suspension. Once a program is itself deregistered, it can no longer register apprenticeship agreements, so the suspension is moot. A suspension may also be ended by written notice from DAS that deregistration proceedings against the program have been dismissed. If DAS finds that no violation serious enough to be the basis of deregistration has occurred, the program's ability to operate normally should be

restored. Finally, DAS may lift the suspension upon a showing of good cause. This provision is necessary to allow DAS the discretion to lift a suspension when deemed appropriate due to circumstances not contemplated by the rulemaking authority.

Subsection (c)(4) provides that a program under suspension may appeal to the administrator of apprenticeship within 10 days of the effective date of the suspension. The right to appeal opens the possibility that the administrator could intervene to restore the program's ability to register new apprenticeship agreements regardless of whether DAS has initiated deregistration proceedings. This amendment is necessary to provide an affected program the opportunity to obtain expeditious relief from a clearly erroneous suspension. However, if the administrator takes no action on the appeal within 30 days, it is deemed denied. This provision avoids burdening the administrator disproportionately given that the stakes are not very high for a suspension where no deregistration proceedings are initiated against the program. The suspension will end after 45 days under subsection (c)(2) even if the administrator fails to act.

Finally, the reference and authority sections are amended to include Labor Code section 3073.9.

Section 212 (Amended)

Existing Section 212 prescribes the content of apprenticeship program standards. The proposed amendments to this section are necessary to ensure that AB 2358's mandates against discrimination and harassment are enshrined in an apprenticeship program's governing documents to inform interested parties, instill a nondiscriminatory program culture, and add a mechanism for enforcement.

The amendment to subsection (a)(2) removes references to the State of California Plan for Equal Opportunity in Apprenticeship (CalPlan), which is obsolete due to developments since its last update in 1986. These amendments are necessary to make the regulations consistent with current law.

Also, a reference to apprentice selection procedures as an addendum to a program's standards is being removed from subsection (b)(5). This change is necessary to align the provision with amendments to Section 215, which require selection procedures to be included in the standards.

The amendment to subsection (b)(12) specifies that provisions in apprenticeship program standards about training in recognizing illegal discrimination and sexual harassment must include the training required under Labor Code section 3073.9. This amendment is necessary to make clear to programs, apprentices, and their employers that AB 2358 is the primary reference point for related training requirements.

Subsection (b)(13) requires program standards to include procedures for preventing discrimination on any of the bases protected by the Fair Employment and Housing Act (FEHA) and ensuring that the program is free from intimidation and retaliation. The characteristics protected by FEHA are broader to those protected by Labor Code section 3073.9 , including several not protected under federal apprenticeship regulations. (29 C.F.R. § 30.1.) This amendment is necessary, first, to make it clear in program standards that the more inclusive FEHA determines which characteristics are protected from discrimination in apprenticeship. (Lab. Code § 3073.9(a) and (b).) In addition, requiring apprenticeship programs to set forth procedures for preventing discrimination is necessary to ensure both that they develop procedures and that they can be held responsible for following them.

Subsection (b)(14) requires program standards to include procedures for handling and resolving internal discrimination complaints. This amendment is necessary to ensure that programs develop such procedures and can be held responsible for following them.

In addition, the subsections following (b)(14) are renumbered, and the reference and authority sections are amended to include Labor Code section 3073.9.

Section 212.3 (Amended)

Existing Section 212.3 requires an apprenticeship program to prepare and submit a Self-Assessment Review annually and lists items that the program must objectively and critically appraise in its review, including “training in the recognition of sexual harassment and illegal discrimination.” The proposed amendment to subsection (b)(11) specifies that a program’s self-assessment of this training must include the training required under Labor Code section 3073.9. This amendment is necessary to make clear to programs that AB 2358 is the primary reference point for the training requirements that must be appraised. The reference and authority sections are amended to include Labor Code section 3073.9.

Section 212.4 (Amended)

Existing Section 212.4 describes the process for deregistering an apprenticeship program, or canceling its approval to operate, based on a violation of law. The first proposed amendment to subsection (b)(1) specifies that violating Labor Code section 3073.9 is grounds for deregistration. This amendment is necessary to highlight the importance of the statute’s prohibition against discrimination. The second amendment to this subsection provides that, in conjunction with deregistration, DAS may suspend a program’s registration of new apprentice agreements under section 206. This amendment is necessary to clarify the enforcement options of the DAS Chief and their relationship to each other. The reference and authority sections are amended to include Labor Code section 3073.9.

Section 214 (New)

AB 2358 requires an apprenticeship program in the building and construction trades to provide annual notice to any contractor that employs apprentices of the program's commitment to equal opportunity and the contractor's obligation to ensure that apprentices it employs are not harassed or discriminated against. (Lab. Code § 3073.9(c)(2)(D).) The proposed amendments of Section 214 make the annual notice requirement enforceable.

New subsection (a) identifies the type of apprenticeship program that is subject to the requirement, states that the notice must be in writing, specifies its content, and sets an annual deadline of January 31. To enforce the notice requirement, DAS must be able track its fulfillment, and the ability to track depends on a written record, specific content requirements, and a deadline. Subsection (a) also specifies that notice must be sent to any contractor that has employed apprentices in the past 24 months. Identifying the contractors to whom notice must be provided is also necessary to enforcement. Presumably, those who have employed apprentices in the past 24 months continue to participate in the apprenticeship system so must be made aware of AB 2358's equal opportunity provisions.

Subsection (b) clarifies that an apprenticeship program is not responsible for providing notice to a contractor that has not employed an apprentice from that program in the past 24 months, even if the contractor has employed apprentices from other programs during that period. This provision is necessary because a program cannot be expected to track an employer's employment of apprentices from other programs, and such a requirement would be redundant.

Subsection (c) specifies that a contractor that has requested an apprentice from a program for the first time must be provided notice when the apprentice is dispatched. This provision is necessary because a new contractor would not have received the annual notice under subsection (a) and should receive notice by the time the apprentice's employment begins, subjecting them to the employer's authority and thus to potential discrimination by the employer. In addition, subsection (c) defines a new contractor as one that has not employed an apprentice from the program in the past 24 months. This clarification is necessary to ensure that the subsection complements subsection (a) and all contractors that employ apprentices are covered.

Section 214.1 (New)

AB 2358 requires an apprenticeship program to conduct equal opportunity orientation and periodic information sessions for its new apprentices, instructors, and employees but does not specify when or how often these sessions must take place. (Lab. Code § 3073.9(c)(2)(C).) This proposed new section restates these requirements in subsection

(a) and then clarifies them. Restatement of the statutory requirement is necessary to orient the reader before introducing new specifications.

Subsection (b) specifies that, for instructors and employees, orientation must occur within the first two weeks of employment. In contrast, under subsection (c), an apprentice must receive orientation within five business days after registration. This difference represents a balance between the urgency of the statutory mandate and the apprenticeship program's operational need for scheduling flexibility. Because instructors and employees are likely to have some familiarity with antidiscrimination protections and equal employment opportunity principles from prior work experience, the regulation allows the program slightly more latitude in scheduling the orientation. An apprentice, however, may be very young and/or entering the workforce for the first time. A timeframe of five business days ensures that they are introduced to these important concepts and can begin to apply them right away.

Once apprentices have received their antidiscrimination orientation, they are on an equal footing in this respect with instructors and employees, so subsection (d) does not distinguish among them in requiring an information session once each calendar year. The regulation specifies an annual session because equal employment opportunity principles are complex and important enough to necessitate annual refreshers. The interval of a calendar year, rather than a year measured from the registration of the apprentice agreement, is specified to simplify administration.

Section 214.2 (New)

AB 2358 requires an apprenticeship program in the building and construction trades to implement measures to ensure that its outreach and recruitment efforts for apprentices extend to all persons available for apprenticeship within the apprenticeship program's relevant recruitment area without regard to the characteristics protected from discrimination. (Lab. Code § 3073.9(c)(3).) These proposed amendments are necessary to ensure equal employment opportunity in apprenticeship by specifying the outreach and recruitment measures required under the statute. Most of the language in Section 214.2 is taken from federal regulation 29 C.F.R. § 30.3(b)(3) to ensure that the section's requirements are consistent with federal requirements.

New subsection (a) requires that apprenticeship programs develop and update annually a list of current recruitment sources from all demographic groups within the relevant recruitment area. Reaching all demographic groups requires identifying the various communities within the recruitment area, along with organizations that represent them and communicate effectively with them. Because demographics and organizations evolve continually, this effort must be renewed each year. Like 29 C.F.R. § 30.3(b)(3)(i), from which the provision's language is taken almost verbatim, subsection (a) lists many examples of recruitment sources. Examples are necessary as guidance to indicate the

full breadth of organization types that may be used as resources for a program's outreach and recruitment.

Subsection (b), like 29 C.F.R. § 30.3(b)(3)(ii), requires that, for each recruitment source, an apprenticeship program identify a contact person and their contact information. This provision is necessary to ensure that the list maintained under subsection (a) is a practical tool for outreach and recruitment.

Subsection (c), like 29 C.F.R. § 30.3(b)(3)(iii), requires that apprenticeship programs provide advance notice of apprenticeship openings to recruitment sources. Advance notice is necessary to enable sources to notify and refer candidates in time to be considered. Programs that are open year-round also have a bi-annual notification requirement to ensure that they maintain relationships with recruitment sources based on regular communication. Notices are required to include the program's equal opportunity pledge, which will encourage applicants from all demographic groups.

Section 214.3 (New)

AB 2358 requires an apprenticeship program to maintain records related to equal employment opportunity mandates. (See Lab. Code § 3073.9(c)(1)(B), (c)(2)(E), (f), and (g).) Proposed Section 214.3, modeled on 29 C.F.R. § 30.12 and Labor Code § 3073.9 details recordkeeping requirements to ensure that programs understand how to comply with the statute and that DAS and the administrator of apprenticeship can access the documentation necessary to enforce statutory protections against discrimination.

Enforcement depends on maintenance of records that can demonstrate a program's compliance. Subsection (a) sets forth the general obligation for an apprenticeship program to collect such data and maintain such records as DAS or the administrator of apprenticeship determines are necessary for monitoring compliance. Establishing the enforcement agency's authority to set these requirements at its discretion is necessary to ensure effective implementation of AB 2358's mandate and to assess administrative procedures, records, and program-specific guidance on an ongoing basis.

Subsection (a) also lists examples of the types of records that must be maintained. Examples are necessary to indicate the full scope of the program's recordkeeping obligation under AB 2358. Documents related to selecting apprentices must be maintained to ensure that the equal employment opportunity mandate is enforceable at an applicant's first point of contact with a program, when it determines the demographic diversity of an apprentice cohort. Information about the program's operation, including documentation related to all elements of an apprentice's terms and conditions of employment and to discrimination complaints, must be maintained to ensure that the mandate is enforceable throughout the term of the apprentice agreement. Documents related to requests for reasonable accommodation must be maintained to ensure that the right of disabled applicants and apprentices to be free from discrimination is upheld.

Finally, the subsection lists any other records pertinent to determining compliance with Labor Code section 3073.9 and its implementing regulations as may be required by DAS or the administrator. This provision is necessary to ensure that programs recognize that maintenance of additional records could be required. This provision enables effective case-specific enforcement authority to promote compliance with Labor Code section 3073.9.

Subsection (b) provides that, for any record maintained under AB 2358, the program must be able to identify the race, sex, ethnicity, and, when known, the disability status of each apprentice and, where possible, of each applicant to apprenticeship and supply this information to DAS or the administrator upon request. If programs did not collect, retain, and provide demographic data based on protected characteristics, their compliance with the statute's equal employment opportunity protections could not be measured.

Subsection (c) requires that records be maintained for five years from the date of their making or of the personnel action involved, whichever occurs later. A period of five years ensures that records relevant to a complaint of discrimination are available for investigation within the statute of limitations (300 days under Section 201.1 and federal law and three years under the FEHA) and covers the terms of most apprenticeships. Records covering the full term of an apprenticeship could be necessary for determining whether a pattern of conduct constituting discrimination had occurred.

Subsection (c) also requires the program to provide records in the format prescribed by DAS or the administrator. Monitoring a large number of apprenticeship programs with varying characteristics to ascertain their compliance with statutory mandates would be too burdensome if the enforcement agency were unable to dictate the format in which data was provided.

Subsection (c) also provides that failure to preserve complete and accurate records constitutes a violation of Labor Code section 3073.9. This provision is necessary for easy reference in enforcement actions.

In the course of collecting data to show compliance with AB 2358, a program may acquire records that include medical information about applicants for apprenticeship and/or apprentices. Because medical information can be sensitive, it is protected under numerous privacy laws, including California's FEHA (Gov. Code § 12900, et seq.) and Confidentiality of Medical Information Act (Civ. Code § 56, et seq.). Subsection (d) provides for the confidentiality of medical information obtained pursuant to Labor Code section 3073.9 and its implementing regulations and restricts use of that information to ensure that programs protect the privacy rights of applicants and apprentices. This subsection is modeled on Cal. Code Regs. tit. 2, § 11069(g) and 29 C.F.R. § 1630.14(d)(4).

Subsection (d)(1) requires medical information to be collected and maintained on separate forms and in separate medical files. Separate forms and files are necessary to ensure that medical information is not accidentally disclosed with other types of information. Subsection (d)(1) also requires medical information to be treated as confidential medical records, with specified exceptions. A supervisor or manager may be informed to facilitate accommodation of a worker's disability, and first aid and safety personnel may be informed to prepare them to render emergency treatment. Government officials must be provided relevant information on request to enable them to enforce AB 2358 and/or the FEHA.

Subsection (d)(2) provides that medical information may not be used for any purpose inconsistent with AB 2358. This provision is necessary to ensure that medical information collected to further equal employment opportunity does not become an instrument of discrimination instead, contravening the intent of the legislature.

Subsection (e) sets forth the obligation of programs to provide DAS and the administrator of apprenticeship access to business premises and records to facilitate compliance evaluation and complaint investigation. Any record or material that DAS or the administrator deems relevant must be made available for inspection and copying both on site and off site. Specifying the scope of the enforcement agency's access to records is necessary to prevent a program from obstructing an evaluation or investigation by limiting access. Under subsection (e), a program must also provide information about the format(s) of its records. This provision is necessary to ensure that a program cannot obstruct an evaluation or investigation by providing records in a format that renders them inaccessible. DAS and the administrator need unrestricted access to monitor programs' business practices in order to determine compliance with AB 2358 and enforce its antidiscrimination protections.

Finally, subsection (e) limits use of any information obtained under AB 2358 to administering the statute or other applicable equal employment opportunity laws. This provision is necessary to protect apprenticeship programs and the individuals referenced in their records from misuse of information about them.

Section 214.4 (New)

Under AB 2358, apprenticeship programs must provide antidiscrimination and antiharassment training to their employees, instructors, and apprentices, and the training must be more than a mere transmittal of information and must include trainee participation. (Lab. Code § 3073.9(c)(4)(A).) This proposed new section is modeled after a FEHA regulation governing statutorily required training regarding harassment. (Cal. Code Regs. tit. 2, § 11024.)

Subsection (a) provides definitions of key terms. Many are taken directly from the FEHA regulation and modified only for consistency with the specific purpose of AB 2358. It is

necessary to include the FEHA definitions to ensure that the amendments are consistent with that statute's requirements. Significant differences include the following:

- Where the FEHA regulation refers to an "employee" or "supervisor," the amendments eliminate the term or replace it with "participant" or "employee, instructor or apprentice." This change is necessary because the AB 2358 training requirement applies to instructors and apprentices as well as to employees.

- Subsection (a)(1) provides a definition not included under FEHA. "Program" is defined as a building trades apprenticeship program under the jurisdiction of the CAC and established pursuant to Labor Code section 3070. This definition is necessary to clearly identify the entities regulated under AB 2358 and establish an efficient way to refer to them throughout the amendments. In new Section 214.4, "program" is used in place of the FEHA term "employer."

- Subsection (a)(2)(B) defines "e-learning" as it is defined under FEHA except that the amendment does not include a specific requirement for retaining training records for two years. Requiring retention for two years would be inconsistent with subsection 214.3(b), which requires records to be retained for at least five years.

- Subsection (a)(2)(C) defines "webinar" as it is defined under FEHA except that the amendment does not include a specific requirement for retaining training records for two years for the reason explained immediately above.

- The definition of "employee" in subsection (a)(3) excludes reference to the threshold of five employees at which antidiscrimination training is required under the FEHA. Under AB 2358, all programs must provide training regardless of size. In addition, unlike the FEHA regulation, the amendment does not specify that the term "employee" includes unpaid interns, unpaid volunteers, and persons providing services pursuant to a contract. Declining to specify which groups are included in the definition ensures that no group is excluded from coverage.

- The model FEHA regulation lists only sex, gender identity, gender expression, and sexual orientation as possible bases of harassment. Subsection 214.4(a)(4) includes all bases protected from discrimination by AB 2358 (and by FEHA regulation Cal. Code Regs. tit. 2, § 12940(j)(1)): race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age for individuals over forty years of age, military or veteran status, or sexual orientation. Listing all protected characteristics is necessary to avoid confusion over which characteristics are protected from harassment specifically.

- Subsection (a)(5) defines “discrimination” as the treatment of one person or group differently from others who are not in the same group, but are similarly situated, based on a protected characteristic. The model FEHA regulation does not define discrimination, but doing so is necessary to clarify the required content of training under AB 2358.

The provisions of subsection (b) are taken directly from FEHA section 11024 and modified only for consistency with the specific purpose of AB 2358. Significant differences include the following:

- Whereas the model FEHA regulation requires one hour of training for non-supervisory employees and two hours of training for supervisory employees every two years, subsection (b)(1) requires one hour for apprentices and two hours for all employees and instructors. The construction industry workforce has remained largely male despite enactment of the FEHA in 1959. Adding antidiscrimination training requirements for apprentices and instructors and extending the training required for non-supervisory employees by one hour are measures necessary to remedy this intractable, industry-specific problem.

- Like the model FEHA regulation, subsection (b)(2) requires retention of training records, except that the amendment specifies a minimum retention period of five years rather than two. Requiring retention for two years would be inconsistent with subsection 214.3(b), which requires that records be retained for at least five years.

- Subsection (b)(3) requires a new program to provide training to employees and instructors within two weeks of the program’s establishment rather than within six months, as required under the FEHA. Shortening the grace period is necessary to remedy discrimination in the construction industry specifically, where the problem has proven more intractable than in other industries.

- Subsection (b)(4) requires new employees and instructors to be trained within two weeks of their hire date rather than within six months. Shortening the grace period is necessary for the reason explained immediately above. This subsection also requires that employees and instructors repeat training every two years, measured either from the initial training date or by calendar year instead of “from the individual or training year tracking method,” as in the model FEHA regulation. This change is necessary for clarification.

- Subsection (b)(5) requires new supervisors to be trained within two weeks of assuming their supervisory position rather than within six months. Shortening the grace period is necessary to remedy discrimination in the construction industry.

Subsection (c) includes fewer specifications for training content than FEHA section 11024. Duplicating the FEHA requirements is unnecessary as training will be designed to comply with FEHA. The significant differences are as follows:

- Subsection (c)(i) specifies that training must include a statement that discriminatory or harassing conduct will not be tolerated. Such a statement is necessary to make clear to training participants that preventing discrimination is a high priority for the apprenticeship program.

- Subsection (c)(ii) differs from the FEHA regulation in requiring a definition, not only of harassment, but also of discrimination. Subsection (c)(ii) also requires instruction on the types of conduct that constitute discrimination. These requirements are necessary because "discrimination" is a critical concept for enforcing AB 2358's protections. The term encompasses but is broader than "harassment," and its meaning must be clear. (Serri v. Santa Clara University (2014) 226 Cal.App.4th 830, 869-70.)

- Subsections (c)(iii) and (c)(iv) specify that training must cover the complaint procedures in sections 212(a)(14) and 201.1. These requirements are necessary because the FEHA regulation does not refer to apprenticeship procedures specifically.

Subsection (d) provides that an apprenticeship program that has made a substantial, good faith effort to comply with section 214.4 by completing training of its staff and apprentices before the amendments go into effect will be deemed to be in compliance. This provision is necessary to allow training completed before these regulations take effect to be counted in a compliance assessment. This provision promotes the opportunity to establish training programs and commence early implementation throughout the workforce.

Section 215 (Amended)

Existing Section 215 begins with requirements for apprenticeship program procedures for selecting apprentices. In the proposed amended section, such procedures are specified in subsection (c). This amendment is necessary to accommodate, as subsections (a) and (b), new provisions that are logically prior to provisions about selection procedures.

To prevent confusion, the amendments replace the term "apprenticeship program sponsor" in existing Section 215 with "apprenticeship program."

Existing Section 215 requires apprenticeship programs to comply with the CalPlan adopted in 1986, considered an appendix to Section 215. Reference to the CalPlan is deleted from the amended text because the CalPlan has been rendered obsolete since

its last update. Instead, the amendment incorporates language from Labor Code section 3073.9 and the federal regulations on equal employment opportunity in apprenticeship (29 C.F.R. Part 30).

In particular, new subsection (a) provides that it is unlawful for an apprenticeship program to discriminate against an apprentice or applicant for apprenticeship on any basis protected under AB 2358. (Lab. Code § 3073.9(a).) This provision is necessary to clarify who is protected from discrimination under the statute's implementing regulations and on what bases. Subsection (a) also lists aspects of a program's operations to which the prohibition applies. This language is modeled from federal regulation 29 C.F.R. § 30.3(a) and Labor Code § 3073.9. This is necessary to ensure that the amendment is comprehensive and consistent with federal and state requirements. For clarity and to have a single regulatory point of reference for program compliance, this section incorporates certain provisions of Labor Code section 3073.9 with slight differences in language and order.

New subsection (b), modeled on 29 C.F.R. § 30.3(c) and Labor Code § 3073.9, requires a program to include an equal opportunity pledge in its apprenticeship standards and opportunity announcements and provides specific pledge language from Labor Code section 3073.9. This amendment ensures that potential apprentices are informed of a program's commitment to preventing discrimination, encouraging applicants from underrepresented demographic groups. Diversifying the industry workforce depends on diversifying cohorts of apprentices, which depends on attracting more diverse pools of applicants.

New subsection (c), modeled on 29 C.F.R. § 30.10 and Labor Code § 3073.9 , sets forth requirements for apprentice selection procedures. Existing Section 215 requires that selection procedures be in writing. Likewise, new subsection (c) requires selection procedures to be included in the program's written apprenticeship standards under Section 212. However, instead of relegating these procedures to an appendix (see Section 212(b)(5)), the amendment requires that they be included in the standards proper. This change is necessary to align the requirement with the priorities of AB 2358. The statute was enacted to remedy the fundamental problem of the underrepresentation of women in construction by diversifying apprenticeship in the building and construction trades. Because eliminating discrimination in apprentice selection is critical to diversifying the industry, selection procedures are a central concern under AB 2358 rather than an afterthought.

Subsection (c) does not prescribe selection procedures to prevent discrimination but sets methodological parameters. This approach allows apprenticeship programs, which vary widely, the flexibility to adopt selection procedures appropriate to their circumstances. The parameters set forth are as follows: procedures must be consistently applied, comply with federal and state antidiscrimination law, not screen out an applicant based on a disability that is not job-related, and be facially neutral with

respect to protected characteristics. These guidelines ensure that selection procedures provide equal employment opportunity to applicants for apprenticeship.

Finally, the reference and authority sections are amended to include Labor Code section 3073.9.

Economic Impact Assessment

With respect to the economic impact of the proposal, the CAC concludes as follows:

(1) It is unlikely that the proposal would create or eliminate jobs within the state because it applies to a limited number of apprenticeship programs in the building and construction trades, only 187 of which currently exist. Such programs are generally sponsored by joint labor-management apprenticeship committees but also include some unilateral management committees created by industry associations and occasionally single employers. The programs are closely regulated, and most have been established for decades. Per Labor Code section 3075, registering a new program with the state requires demonstration of specific conditions constituting a need for the program to be established. This requirement limits growth in the industry. Furthermore, the proposed anti-discrimination and anti-harassment training is not particularly unique, and qualified trainers already exist.

(2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state because the regulations would only apply to apprenticeship programs in the building and construction trades. Because the number of such programs is limited and the FEHA already requires businesses with five or more employees to provide training, existing training providers can be expected to absorb any increased demand for training.

(3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state because the regulations would apply only to apprenticeship programs in the building and construction trades. Because the number of such programs is limited and the FEHA already requires businesses with five or more employees to provide training, the increase in demand for training as a result of the proposed regulations would be negligible.

Anticipated Benefits

Adopting the proposed amendments would enable full implementation of AB 2358’s protections, benefitting the health and welfare of California residents, as well as worker safety. Not only apprentices in the building and construction trades, but also their employers and apprenticeship programs would benefit.

Reducing or eliminating workplace discrimination and harassment would encourage workers from historically underrepresented groups to enter the construction industry as apprentices and enable them to work without facing intimidation or coercion. Enforcement procedures would provide apprentices and applicants for apprenticeship avenues for redress should they be subject to discrimination or harassment. Psychologically healthier work environments would benefit apprentices, coworkers, and supervisors. Apprentices who might have been driven to quit their apprenticeships would benefit both psychologically and monetarily from retaining stable incomes and work schedules. Proper training of employees, instructors, and apprentices about discrimination and harassment could also reduce incidences of work-related violence.

Eliminating the distractions and discord caused by workplace discrimination would benefit employers by improving workers' job performance and reducing business disruption. Employers would also benefit from a more diverse and competitive workforce, lower staff turnover, and lower liability. The proposed regulations would enable apprenticeship programs to implement AB 2358's requirements and incorporate them into program standards more easily. Apprenticeship programs would be better able to retain apprentices and participating employers. In addition, clear enforcement procedures would enable a program suspected of violating AB 2358 to know what to expect in an enforcement action.

Reducing or eliminating workplace discrimination and harassment would also have broader impacts, promoting social equity generally. However, the proposal would not have a discernible benefit for the state's environment beyond encouraging electronic recordkeeping, which reduces paper consumption.

Evidence Supporting the Finding of No Significant Adverse Economic Impact on Business

The CAC made an initial determination that the action would not have a significant, adverse economic impact on business, including the ability of California businesses to compete with businesses in other states. The total cost of the amendments to all apprenticeship programs in California over ten years would be only $3,839,110, which is negligible.

Consideration of Reasonable Alternatives and the CAC's Reasons for Rejecting those Alternatives

One alternative to establishing regulatory procedures to implement the many requirements contained in AB 2358 is not doing so. During rulemaking subcommittee meetings, the CAC discussed public comments and suggestions extensively and determined that not amending the regulations was likely to be more burdensome for affected programs and less effective than amending them. The public is invited to

provide additional comments and suggestions regarding alternatives during the public comment period.

Technical, Theoretical, and/or Empirical Studies, Reports, or Documents

No technical, theoretical, or empirical studies or reports or other documents were relied upon in drafting these proposals.