

CALIFORNIA APPRENTICESHIP COUNCIL

Title 8. Industrial Relations
Division 1. Department of Industrial Relations
Chapter 2. California Apprenticeship Council
Subchapter 1. Apprenticeship

TEXT OF PROPOSED REGULATIONS

Amend: Section 201. Filing of Complaints

Appeals by apprentices from discipline shall be filed in accordance with the procedures under 8 C.C.R. 207.1. Complaints alleging noncompliance with Labor Code section 3073.9 shall be filed in accordance with Section 201.1. ~~Complaints that are not appeals from discipline~~ All other complaints may be filed by any interested person with the Administrator of Apprenticeship or the Administrator of Apprenticeship upon his/her own initiative may issue a complaint, within the time period specified below, when there is cause to believe that a decision, order or action of an apprenticeship program sponsor has been in violation of its standards or rules or an apprentice agreement and has been unfair or unreasonable; or that there has been a violation of:

(1) Chapter 4, Division 3 of the Labor Code (excluding Section 1777.5 and 3099 et. seq.);

(2) California Code of Regulations, Title 8, Chapter 2, Subchapter 1 (excluding Article 10); or

~~(3) Equal Opportunity Standards, which shall be filed and conducted in accordance with the State of California Plan for Equal Opportunity Apprenticeship (see title 8, California Code of Regulations, Section 215).~~

(b) All such complaints shall be filed within thirty days of the alleged violation, except for violations of Equal Opportunity Standards which shall be filed within 300 days.

(c) Complaints filed with, or issued by the Administrator of Apprenticeship shall contain the following:

(1) The full name and address of the party (person, organization, or other party) filing the complaint (hereinafter referred to as the "charging party").

(2) The full name and address of the party (person, organization, or other party) against whom the complaint is made (hereinafter referred to as the "respondent").

(3) A clear and concise statement of the facts constituting the basis for the complaint.

(4) The signature of the person filing the complaint or an authorized officer or agent in the case of an organization, employer, labor union, apprenticeship program sponsor, or other interested party.

(5) A declaration by the person signing the complaint, under penalties of law, that its contents are true and correct to the best of his/her knowledge and belief.

(d) Upon receipt or issuance of a complaint the Administrator of Apprenticeship shall cause a copy of such complaint to be served upon the respondent(s).

(e) Complaints may be withdrawn only with the consent of the Administrator of Apprenticeship.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3073.9, 3081, and 3082, Labor Code.

New: Section 201.1 Complaints Alleging Violation of Labor Code section 3073.9

(a) Any interested person may file a complaint against a program sponsor that alleges noncompliance with Labor Code section 3073.9 or any of its implementing regulations. Upon his or her own initiative, the Administrator may also issue a complaint when there is cause to believe that there is a failure to comply with the requirements of Labor Code section 3073.9 or any of its implementing regulations.

(b) All such complaints must be filed within 300 days of the alleged violation, and must contain the information described in Section 201.

(c) The Administrator of Apprenticeship or his or her designated representative shall investigate any complaint that alleges noncompliance with Labor Code section 3073.9 or any of its implementing regulations. The Administrator may also hold hearings in connection with the complaint. All investigations and hearings under this section shall be conducted in accordance with Section 202, except that the Administrator may also direct the Chief DAS to conduct an evaluation in accordance with Labor Code section 3073.1. The Administrator shall issue a written order explaining the reasons for directing the Chief to conduct an evaluation.

(d) If the Chief DAS has information that a program has failed to comply with the requirements of Labor Code section 3073.9 or any of its implementing regulations, the Chief shall so notify the program in writing by electronic mail, or by mail if the program does not have an electronic mail address on file. The notice shall specify the failure and include any supporting information. The program may submit a response no later than 30 days of service of the notice. The Chief shall consider the response, and if he or she deems the response inadequate, may initiate an evaluation in accordance with Labor Code section 3073.1 and/or deregistration proceeding in accordance with Section 212.4.

(e) Nothing in this section shall be construed as limiting the Chief's authority under Labor Code section 3073.1 to conduct evaluations.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3073.1, 3073.9, 3081, and 3082, Labor Code.

Amend: Section 206. Approval and Registration of Apprentice Agreements;
Suspending the Registration of New Apprentice Agreements

(a) Agreements approved by Joint Apprenticeship Committee

(1) An apprentice agreement in an approved joint apprenticeship program shall be approved by the joint apprenticeship committee if the agreement complies with the apprenticeship program standards and Chapter 4 of Division 3 of the Labor Code and its implementing regulations under Title 8, California Code of Regulations, Section 200 et seq; and where there are adequate related and supplemental instruction and an assurance of employment to provide on-the-job training.

(2) After approval by the joint apprenticeship committee, the agreement shall be sent to DAS for registration within thirty (30) days of its execution by the apprentice.

(3) DAS shall register the agreement if DAS determines that it was approved in accordance with the requirements set out above, under subsection (a)(1), and it was submitted to DAS within thirty (30) days of its execution by the apprentice.

(4) Within thirty (30) days of receipt of the agreement, DAS shall either register the agreement or return it to the program sponsor with the reasons for non-registration. If DAS registers the agreement, the registration shall be effective as of the date of its execution by the apprentice.

(b) Agreements approved by the Administrator

(1) If there is no joint apprenticeship committee, the apprenticeship agreement shall be sent to DAS for approval by the Administrator within thirty (30) days of its execution, and shall be approved if the Administrator determines that it complies with the requirements set out above, under subsection (a)(1), and it was submitted to DAS within thirty (30) days of its execution by the apprentice.

(2) If approved, the agreement shall be considered registered as of the date of its execution by the apprentice. A copy of the approved agreement shall be filed with the CAC for its review. If the Administrator does not approve the agreement, it shall not be registered and shall be returned to the program sponsor within 30 days of the date of receipt with the reasons for non-approval.

(c) (1) DAS may suspend registrations of new agreements by providing written notice of the reasons for the suspension. DAS shall provide such notice at least 10 days before the suspension is effective and serve the notice on the program sponsor by electronic mail, or by mail if the program sponsor does not have an electronic mail address on file.

(2) If DAS does not initiate deregistration proceedings in accordance with Section 212.4 within 45 days of the effective date of the suspension, the suspension is lifted.

(3) If deregistration proceedings are pending when the notice of suspension is served, or DAS initiates deregistration proceedings within 45 days of the effective date of the suspension, the suspension will remain in effect until one of the following occurs:

(A) A decision on the deregistration is final;

(B) DAS provides written notice that it has dismissed deregistration proceedings;

(C) DAS lifts the suspension, upon a showing of good cause.

(4) A program sponsor affected by a suspension under this section may appeal to the Administrator within 10 days of the effective date of the suspension. If the Administrator does not act within 30 days of the appeal, the appeal is deemed denied.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3071, 3073.1, 3073.9, 3075.7, 3079 and 3080, Labor Code.

Amend: Section 212. Content of Apprenticeship Program Standards.

Apprenticeship programs shall be established by written apprenticeship standards which must be approved by the Chief DAS under Section 212.2. In order to be approved, the standards must cover all work processes within the apprenticeable occupation. The standards must contain:

(a) A statement of:

(1) the occupation(s) and an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(2) the parties to whom the standards apply, the program sponsor's labor market area, ~~as defined by Section 215 appendix 2(l), for purposes of meeting equal employment opportunity goals in apprenticeship training~~ and the program's geographic area of operation as defined by section 205(n);

(3) the duties of the apprentice;

(4) the apprentice's working conditions unique to the program;

(5) the progressively increasing wage, employee benefits and other compensation of the apprentice, as set by Section 208;

(6) the ratio of apprentices to journeymen, or the number of apprentices to be employed and the method used to determine the ratio whether by job site, workforce, department or plant;

(7) the local education agency which has agreed to provide the related and supplemental instruction, and a description of the courses to be provided;

(b) Provisions for:

(1) establishment of an apprenticeship committee, if applicable;

(2) administration of the standards;

(3) establishment of rules and regulations governing the program. An apprenticeship program's standards or rules may provide for a period of probation which may not be for more than the combination of 1,000 hours of employment and 72 hours of related instruction;

(4) determining the qualifications of employers if other than single employer programs and an orientation, workshop, or other educational session for employers to explain the apprenticeship program's standards and the operation of the apprenticeship program;

(5) determining the qualifications of apprentice applicants and fair and impartial treatment of applicants for apprenticeship selected through uniform selection procedures, ~~which shall be an addendum to the standards~~, pursuant to Section 215;

(6) the incorporation of the provisions of the standards into the apprentice agreement either directly or by reference;

(7) a procedure to be utilized for the recording and maintenance of all records concerning apprenticeship and otherwise required by law including a system for recording the apprentice's worksite job progress and progress in related and supplemental instruction and a system for the periodic review and evaluation of the apprentice's progress in job performance and related instruction;

(8) discipline of apprentices for failure to fulfill their obligations on-the-job or in related instruction, including provisions for fair hearings;

(9) terminating, or recommending the cancellation of, apprentice agreements in accordance with section 207;

(10) recommending issuance of State Certificates of Completion of Apprenticeship pursuant to Section 224;

(11) training and supervision, both on the job and in related instruction, in first aid, safe working practices and the recognition of occupational health and safety hazards;

(12) training in the recognition of illegal discrimination and sexual harassment, including the anti-harassment and anti-discrimination training required under Labor Code section 3073.9, subdivision (c)(4)(A);

(13) procedures to ensure that its apprentices are not harassed or discriminated against on any of the bases protected by the Fair Employment and Housing Act, and to ensure that its apprenticeship program is free from intimidation and retaliation;

(14) establishment and implementation of procedures for handling and resolving internal complaints about harassment or discrimination as required under Labor Code section 3073.9, subdivision (c)(4)(C).

~~(13)~~ (15) approval of the standards, and revisions to the standards, by the Chief DAS;

~~(14)~~ (16) an adequate mechanism to be used for the rotation of the apprentice from work process to work process to assure the apprentice of complete training in the apprenticeable occupation including mobility between employers when essential to provide exposure and training in various work processes in the apprenticeable occupation; and an adequate mechanism that will be used to provide apprentices with reasonably continuous employment in the event of a lay-off or the inability of one employer to provide training in all work processes as outlined in the standards;

~~(15)~~ (17) the on-going evaluation of the interest and capacity of individual employers to participate in the apprenticeship program and to train apprentices on-the-job and provisions for the evaluation of on-the-job training and related and supplemental instruction;

~~(16)~~ (18) compliance with training criteria where such have been adopted pursuant to Section 212.01; and

~~(17)~~ (19) meaningful representation of the interests of apprentices in the management of the program, which is shown where:

(A) In a joint labor-management sponsored program, the apprentices participating in that program are represented by a labor organization pursuant to one of the following: National Labor Relations Act, the Railway Labor Act, the California Public Employee Relations Act, Agricultural Labor Relations Act, the Meyers-Milias Brown Act;

(B) In a program sponsored by more than one employer or an association of employers, the apprentices participating in that program are at least equally represented on an advisory panel established by the apprenticeship committee responsible for the operation of the program. The apprentices shall be represented on the advisory panel by at least three representatives of the apprentices' choice who shall have full voice and vote on the panel except as to financial matters or matters that relate to the administration or structure of an employee benefit plan or the administration or operation of a trust fund. The representatives of the apprentices shall be selected by way of a secret ballot election among the apprentices conducted by the apprenticeship program not less than once every two (2) years. This advisory panel shall meet not less than once every quarter to address issues and concerns raised by and affecting the apprentices in the program.

(c) For programs in the building and construction trades industry, the procedures specified in subsection (b)(7) above shall also include systems for

(1) providing to each apprentice, on at least a semiannual basis, a statement showing the number of hours of on-the-job training and related and supplemental instruction that the apprentice has acquired toward graduation, the total number of hours of on-the-job training and related and supplemental instruction that remain to be completed for graduation, and the apprentice's expected graduation date; and

(2) submission of apprentices' registration, change of address, graduation, and termination data to DAS on a monthly basis in an acceptable electronic format.

(d) The names and signatures of the parties.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3071, 3073, 3073.9, 3075, 3075.6, 3075.7 and 3078, Labor Code.

Amend: Section 212.3. Apprenticeship Program Self-Evaluation and Monitoring.

(a) Each apprenticeship program shall annually prepare and submit a Self-Assessment Review as well as a Program Improvement Plan to the Chief DAS; provided, however, that a program is not required to submit a Review and a Plan in the first year of its existence.

(b) The Self-Assessment Review shall contain an objective and critical appraisal of the following items at a minimum:

(1) curriculum and instruction;

(2) supervision and management;

(3) individual apprentice training plans;

(4) use of competent and qualified personnel;

(5) utilization of facilities, equipment and material;

(6) community, business and industry involvement;

(7) recruitment, assessment and placement;

(8) program promotion;

(9) program accountability;

(10) safety and drug-free environmental training; and

(11) training in the recognition of sexual harassment and illegal discrimination, including the anti-harassment and anti-discrimination training required under Labor Code section 3073.9, subdivision (c)(4)(A).

(c) The Program Improvement Plan shall contain provisions by which the program sponsor(s) represent that good faith efforts shall be made to improve identified deficiencies in program operations and in the training of apprentices. Such Plan shall contain at a minimum:

- (1) remedial priorities;
- (2) program improvement objectives;
- (3) identification of personnel, resources, and action needed; and
- (4) timelines for completion of objectives.

(d) A program may be selected for evaluation at any time to ensure:

- (1) the program is complying with its standards;
- (2) adequate related and supplemental instruction is provided;
- (3) on-the-job training is provided by a journeyworker;
- (4) all work processes are being covered; and
- (5) graduates have completed the necessary requirements.

(e) DAS shall select a program for priority evaluation based on the following:

- (1) a finding of a deficiency made by the Chief DAS, which shall include deficiencies noted in the program self-assessment, program review, and deficiencies in areas listed in subsection (d);
- (2) a new or newly expanded building and construction trades industry program within one year following its approval;
- (3) a determination that a program has been the subject of two or more meritorious complaints concerning the recruitment, on-the-job training, or related and supplemental instruction within a five-year period;
- (4) a determination that a building and construction trades industry program has an annual completion rate below 50 percent of the average completion rate for the applicable trade;

(A) For purposes of this section, the annual completion rate shall be determined by calculating the percentage of apprentices registered in a specific industry and program who receive a Certificate of Apprenticeship Completion by the end of the calendar year

following the expected completion date listed on their apprenticeship agreements ("Calculation Period"). Apprentice agreements that are cancelled within one year after execution of the agreement by the apprentice will be excluded from this calculation. Completion rates will be determined annually on a program and industry-wide basis.

(B) A program sponsor may, within one year after its annual completion rate has been determined, submit a written request to the Chief DAS to have its completion rate for that year revised to include any apprentices who have received a Certificate of Apprenticeship Completion within one year after the end of the Calculation Period. The request must provide the names of the apprentices and state the reasons for their delayed completion dates. Such requests shall be granted upon a showing of good cause, which shall include economic conditions that limit opportunities for on-the-job training, and personal extenuating circumstances that prevent apprentices from completing the program within the Calculation Period.

(5) a finding of evidence that information provided by a building and construction trades industry apprenticeship program was purposefully misstated.

(f) A program that has been selected for evaluation shall be notified by the Chief DAS at least 14 days prior to the commencement of the evaluation.

(g) An evaluation of a program shall include a review of the program records, including records of apprentice training and related and supplemental instruction; inspection of the program's training facilities; visits to on-the-job training locations; and review of individual apprentice records. Apprentice records may be reviewed by a method of random selection and not every apprentice record need be reviewed so long as a sufficient number are reviewed to fairly evaluate the program. DAS shall attempt to contact at least 30 percent of the apprentices who have dropped out of the program prior to completion in the preceding five years to determine their reasons for leaving the program. The Chief DAS shall provide a copy of the proposed evaluation report to the program within 30 days of the completion of the evaluation. The program shall have 14 days following receipt of the report to make comments. The Chief DAS may reopen the evaluation in response to any comments, and shall take into account any comments when preparing a final evaluation report.

(h) The final evaluation report shall contain recommendations for remedial action to correct any deficiencies that have been identified and a proposed time schedule for doing so. Programs that fail to follow the Chief DAS recommendations or correct deficiencies within 90 days of the final evaluation report shall be subject to deregistration under Section 212.4 (b).

(i) Final evaluation reports shall be made public by posting on the DAS website within 10 days following completion of the evaluation. A copy shall be also be presented to the Council for any program under the Council's jurisdiction. Evaluation reports shall not include the name, address or social security number or other identifying information about any apprentice and shall not include any medical or other confidential information about any apprentice.

(j) The Chief DAS shall report at each regular California Apprenticeship Council meeting on the status of each pending evaluation for programs under the Council's jurisdiction. The Chief shall also report on the status of evaluations that were completed in the preceding 180 days, including whether deficiencies identified in the evaluation report have been corrected or whether a program's approval has been or is in the process of being withdrawn.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3073, 3073.1, 3073.9, 3074, 3074.3, 3075, 3078 and 3090, Labor Code.

Amend Section 212.4. Deregistration of Programs.

The deregistration of a program cancels the approval of a program to operate.

(a) The Chief DAS shall deregister an apprenticeship program upon the request of the sponsor as long as within fifteen days of the Chief's acknowledgment of the request for deregistration, the sponsor shall inform each apprentice in writing of the deregistration, the proposed effective date of the deregistration and the names and addresses of other programs in the area. The Chief shall not deregister the program unless the sponsor complies with this requirement.

(b) The Chief may deregister an apprenticeship program, if the program is not conducted, operated and administered in accordance with applicable federal and state law and regulations or the program's approved apprenticeship standards, or if a program has had no active apprentices for a period of two (2) years:

(1) If the Chief has information that a program is not being operated in accordance with applicable federal and state law and regulations, including violations of Labor Code section 3073.9, or the program's approved apprenticeship standards, the Chief shall so notify the program sponsor in writing sent by registered or certified mail, with return receipt requested. The notice shall identify the violation and the action needed to correct the violation. The notice shall state that the program will be deregistered unless corrective action is completed within thirty days. Upon a showing of good cause, the Chief may grant the sponsor a reasonable extension of time to achieve corrective action. In conjunction with the deregistration process, the Chief may also suspend registrations of new apprentice agreements under the procedure set forth in Section 206. Where the Chief has information that a program has had no active apprentices for a period of two (2) years, that shall be considered grounds for deregistration and the Chief shall notify the program sponsor in writing as set forth above that the program will be deregistered unless the program can show good cause within thirty (30) days why it should not be deregistered;

(2) The Chief shall advise the sponsor in every reasonable way to help the program sponsor correct the violation;

3) If the required correction is made, the Chief may periodically review the program to see that the correction is maintained;

(4) If the required correction is not completed, or if a program which has had no active apprentices for a period of two (2) years fails to show good cause why it should not be deregistered, within the allotted time, the Chief shall send a notice to the sponsor, by registered or certified mail, return receipt requested. The notice shall:

(A) State that it is sent pursuant to this subsection;

(B) Indicate that the program has had no active apprentices for a period of two (2) years and has failed to show good cause why it should not be deregistered; or identify the violation with particularity, state when it was called to the sponsor's attention, identify the correction required and state that the sponsor has failed or refused to correct the violation;

(C) State that the Chief will recommend that the Administrator deregister the program unless the sponsor requests a hearing within fifteen days of the date of the notice;

(5) If the sponsor does not request a hearing, the Chief shall transmit to the Administrator a report containing all pertinent facts and circumstances concerning the violation, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences shall include the time, date, place, and persons present. The Administrator shall make a final order on the basis of the record.

(6) If the sponsor requests a hearing, the Chief shall transmit to the Administrator a report containing all the data listed in subparagraph (5) above. The Administrator shall hold a hearing in accordance with Section 202, and shall make a final decision on the basis of the record, including the proposed findings and recommended decision of the Chief. At the Administrator's discretion, he/she may allow the sponsor a reasonable period of time to achieve corrective action.

(7) The decision of the Administrator concerning deregistration of a program shall be final and become an order of the Council unless an appeal is filed by the sponsor with the Council within thirty (30) days following the date the decision is issued. If the program is deregistered, and no appeal to the Council is filed, the deregistration shall be effective sixty (60) days following the date the Administrator's Decision was issued.

(8) The sponsor may appeal the Administrator's Decision to the Council. If an appeal is filed, the procedures of Section 203 shall be followed. The Decision of the Council shall be final and shall be effective thirty (30) days following the date the Council's Decision is issued.

(9) Upon issuance of the Administrator's Decision to deregister, the Administrator shall make public notice of this Decision and shall notify the sponsor and other programs in the same occupation and in the same labor market area. Within 15 days of service of the Administrator's Decision, the sponsor shall notify each apprentice of the Administrator's Decision to deregister the program. The sponsor shall inform each apprentice that, if the deregistration decision becomes final, it automatically terminates the apprentice's individual registration. The sponsor shall provide each apprentice with

the names and addresses of other programs in the area. Finally, the sponsor shall provide Chief, DAS, with proof of said mailing.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3073, 3073.1, 3073.9, 3074, 3074.3, 3075, 3078 and 3090, Labor Code.

Amend: Article 5. Equal Opportunity in Apprenticeship Selection Procedures

New: Section 214. Notice Regarding Nondiscrimination Obligations.

(a) On or before January 31 of each year, every apprenticeship program in the building and construction trades must send the written notice described in this section to any contractor that has employed apprentices in the past 24 months. The written notice must include the program's commitment to equal opportunity and the contractor's obligation to ensure that apprentices it employs are not harassed or discriminated against on any of the bases described in subdivision (a) of Labor Code section 3073.9.

(b) The annual written notice need not be provided to a contractor that has not employed an apprentice from the program in the past 24 months.

(c) At the time of dispatch, the program must also provide the written notice described in this section to a new contractor that has requested an apprentice from the program for the first time. A contractor that has not employed an apprentice from the program in the past 24 months is considered a new contractor.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3073.9, Labor Code.

New: Section 214.1. Equal Opportunity Orientation and Periodic Information Sessions

(a) Each apprenticeship program in the building and construction trades must conduct orientation and periodic information sessions for apprentices, instructors, and employees of the apprenticeship program to inform and remind such individuals of the apprenticeship program's equal employment opportunity policy.

(b) Orientation for instructors and employees of the apprenticeship program must occur within the first two weeks of employment.

(c) Orientation for apprentices of the apprenticeship program must occur no later than five business days after the apprentice is registered.

(d) Periodic information sessions must be conducted for apprentices, instructors, and employees of the apprenticeship program once each calendar year.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3073.9, Labor Code.

New: Section 214.2. Equal Opportunity Outreach and Recruitment Efforts

To ensure that outreach and recruitment efforts extend to all persons available for apprenticeship within the apprenticeship program's relevant recruitment area, apprenticeship programs in the building and construction trades must:

(a) Develop and update annually a list of current recruitment sources that will generate referrals from all demographic groups within the relevant recruitment area. Examples of relevant recruitment sources includes but are not limited to: The public workforce system's One-Stop Career Centers; local workforce investment boards; welfare to work programs; community-based organizations; community colleges; vocational, career and technical schools; pre-apprenticeship programs; and State or Federally-funded, youth job-training programs such as YouthBuild and Job Corps or their successors;

(b) Identify a contact person, mailing address, telephone number, and email address for each recruitment source; and

(c) Provide recruitment sources advance notice, preferably 30 days, of apprenticeship openings so that the recruitment sources can notify and refer candidates. Programs that are open year-round shall have a bi-annual notification requirement. Such notification must also include documentation of the program's equal opportunity pledge specified in subdivision (d) of Labor Code section 3073.9.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3073.9, Labor Code.

New: Section 214.3. Record Keeping

(a) General obligation. Each program in the building and construction trades must collect such data and maintain such records as DAS or the Administrator finds necessary to determine whether the program has complied or is complying with the requirements of Labor Code section 3073.9 and its implementing regulations. Such records must include, but are not limited to records relating to:

(1) Selection for apprenticeship, including applications, tests and test results, interview notes, bases for selection or rejection, and any other records required to be maintained under relevant law;

(2) Information relative to the operation of the apprenticeship program, including but not limited to job assignments in all components of the occupation as required under Section 212(a)(1), promotion, demotion, transfer, layoff, termination, rates of pay, other forms of compensation, conditions of work, hours of work, hours of training provided, and any other personnel records relevant to complaints filed with the Administrator under Section 201.1 or with other enforcement agencies;

(3) Compliance with the requirements of Labor Code section 3073.9;

(4) Requests for reasonable accommodation; and

(5) Any other records pertinent to a determination of compliance with Labor Code section 3073.9 and its implementing regulations, as may be required by DAS or the Administrator.

(b) Program identification of record. For any record the sponsor maintains pursuant to Labor Code section 3073.9 and its implementing regulations, the program must be able to identify the race, sex, ethnicity (Hispanic or Latino/non-Hispanic or Latino), and when known, disability status of each apprentice, and where possible, the race, sex, ethnicity, and disability status of each applicant to apprenticeship and supply this information upon request to DAS or the Administrator.

(c) Maintenance of records. The records required by Labor Code section 3073.9 and its implementing regulations and any other information relevant to compliance with this section must be maintained for 5 years from the date of the making of the record or the personnel action involved, whichever occurs later, and must be made available upon request to DAS or the Administrator or other authorized representative in such form as DAS or the Administrator may determine is necessary to enable DAS or the Administrator to ascertain whether the program has complied or is complying with Labor Code section 3073.9 and its implementing regulations. Failure to preserve complete and accurate records as required by subdivisions (a) and (b) of this section constitutes noncompliance with Labor Code section 3073.9 and its implementing regulations.

(d) Confidentiality and use of medical information.

(1) Any information obtained pursuant to Labor Code section 3073.9 and its implementing regulations regarding the medical condition or history of an applicant or apprentice must be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or apprentice and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing Labor Code section 3073.9 and its implementing regulations, or the Fair Employment and Housing Act, must be provided relevant information on request.

(2) Information obtained under Labor Code section 3073.9 and its implementing regulations regarding the medical condition or history of any applicant or apprentice may not be used for any purpose inconsistent with Labor Code section 3073.9.

(e) Access to records. Each program must permit access during normal business hours to its places of business for the purpose of conducting on-site evaluations under Labor Code section 3073.1 and complaint investigations and inspecting and copying such books, accounts, and records, including electronic records, and any other material DAS or the Administrator deems relevant to the matter under investigation and pertinent to

compliance with Labor Code section 3073.9 and its implementing regulations. The program must also provide DAS or the Administrator access to these materials, including electronic records, off-site for purposes of conducting evaluations under Labor Code section 3073.1 and complaint investigations. Upon request, the program must provide DAS or the Administrator information about all format(s), including specific electronic formats, in which its records and other information are available. Information obtained in this manner will be used only in connection with the administration of Labor Code section 3073.9 and its implementing regulations or other applicable equal employment opportunity laws.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3073.9, Labor Code.

New: Section 214.4. Required training and education regarding harassment and discrimination based on 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.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) "Program" is a building trades apprenticeship program under the jurisdiction of the California Apprenticeship Council established pursuant to Labor Code section 3070.

(2) "Effective interactive training" includes any of the following:

(A) "Classroom" training is in-person, trainer-instruction, whose content is created by a trainer and provided to an employee, instructor, or apprentice by a trainer, in a setting removed from the participants daily duties.

(B) "E-learning" training is individualized, interactive, computer-based training created by a trainer and an instructional designer. An e-learning training shall provide a link or directions on how to contact a trainer who shall be available to answer questions and to provide guidance and assistance about the training within a reasonable period of time after the employee, instructor, or apprentice asks the question, but no more than two business days after the question is asked.

(C) "Webinar" training is an internet-based seminar whose content is created and taught by a trainer and transmitted over the internet or intranet in real time. A Program utilizing a webinar for its employees, instructors and apprentices must document and demonstrate that each participant who was not physically present in the same room as the trainer nonetheless attended the entire training and actively participated with the training's interactive content, discussion questions, hypothetical scenarios, polls, quizzes or tests, and activities. The webinar must provide the participants an opportunity to ask questions, to have them answered and otherwise to seek guidance and assistance.

(D) For any of the above training methods, the instruction shall include questions that assess learning, skill-building activities that assess the participant's application and understanding of content learned, and numerous hypothetical scenarios about harassment, each with one or more discussion questions so that employees remain engaged in the training. Examples include pre- or post-training quizzes or tests, small group discussion questions, discussion questions that accompany hypothetical fact scenarios, use of brief scenarios discussed in small groups or by the entire group, or any other learning activity geared towards ensuring interactive participation as well as the ability to apply what is learned to the participant's work environment.

(3) "Employee" includes full time, part time and temporary workers of the Program.

(4) "Harassment" under this section refers to harassment on the bases of 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.

(5) "Discrimination" means the treatment one person or group differently from others who are not in the same group, but are similarly situated, based on many different factors, including 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.

(6) "Trainers" or "Trainers or educators" qualified to provide training under this section are individuals who, through a combination of training, experience, knowledge, and expertise, have the ability to provide training about the following: 1) the definitions of abusive conduct, sexual harassment as specified in Government Code section 12940(j), gender identity, gender expression, sexual orientation, age, and the definitions of the other bases enumerated in the FEHA as specified in Government Code section 12940(a); 2) how to identify behavior that may constitute unlawful harassment, discrimination, and/or retaliation under both California and federal law; 3) what steps to take when harassing behavior occurs in the workplace; 4) how to report harassment complaints; 5) supervisors' obligation to report harassing, discriminatory, or retaliatory behavior of which they become aware; 6) how to respond to a harassment complaint; 7) the employer's obligation to conduct a workplace investigation of a harassment complaint; 8) what constitutes retaliation and how to prevent it; 9) essential components of an anti-harassment policy; 10) the effect of harassment on harassed employees, co-workers, harassers and employers; and 11) practical examples in the prevention of harassment, discrimination, and retaliation based on 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 and the prevention of abusive conduct. Nothing in this section shall preclude an employer

from utilizing multiple trainers who, in combination, meet all of the qualifications required by this subsection.

(7) "Training," as used in this section, is effective interactive training as defined at section 214.4(a)(2).

(8) "Two hours" of training is two hours of classroom training or two hours of webinar training or, in the case of an e-learning training, a program that takes no less than two hours to complete.

(9) "One hour" of training is one hour of classroom training or one hour of webinar training or, in the case of an e-learning training, a program that takes no less than one hour to complete.

(b) Training.

(1) Frequency of Training. A Program shall provide one hour of training to apprentices and two hours of training to employees and instructors, in the content specified in section 214.4(c), once every two years.

(2) Documentation of Training. To track compliance, a Program shall keep documentation of the training it has provided its employees, instructors and apprentices under this section for a minimum of five years, including but not limited to the names of the employees and apprentices 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.

(3) Training at New Program. Programs created after January 1, 2022, must provide training to employees and instructors within two weeks of their establishment and thereafter biennially.

(4) Training for New Employees and Instructors. New employees and instructors shall be trained within two weeks of their hire date and thereafter shall be trained once every two years.

(5) Training for New Supervisors. New supervisors shall be trained within two weeks of assuming their supervisory position (either as a new hire or as a promoted employee) and thereafter shall be trained once every two years.

(c) Content of training.

(i) That discriminatory or harassing conduct will not be tolerated.

(ii) The definition of discrimination and harassment and the types of conduct that constitute unlawful discrimination and harassment.

(iii) The complaint procedures established by the apprenticeship program pursuant to Section 212(a)(14) of Title 8 of the California Code of Regulations.

(iv) The procedure for filing a complaint with the Administrator of Apprenticeship pursuant to Section 201.1 of Title 8 of the California Code of Regulations.

(d) Compliance with section 214.4 prior to effective date of these regulations. A Program who has made a substantial, good faith effort to comply with section 214.4 by completing training of its employees, instructors and apprentices prior to the effective date of these regulations shall be deemed to be in compliance with section 214.4 regarding training as though it had been done under these regulations.

Note: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3073.9, Labor Code.

Amend: Section 215. ~~State Compliance~~ State of California Plan for Equal Opportunity in Apprenticeship.

~~Selection procedures must be in writing, approved by the apprenticeship program sponsor, and must meet objective standards.~~

~~Apprenticeship programs must comply with the State of California Plan for Equal Opportunity in Apprenticeship adopted by the California Apprenticeship Council on April 26, 1986 to be effective September 28, 1986, as though expressly set forth herein and shall be considered as an appendix hereto and appropriately marked as such, including the month and year of adoption.~~

(a) *Discrimination prohibited. It is unlawful for a registered apprenticeship program to discriminate against an apprentice or applicant for apprenticeship on the basis of 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 with regard to all of the following:*

(1) *Recruitment, outreach, and selection procedures.*

(2) *Hiring or placement, upgrading, periodic advancement, promotion, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.*

(3) *Rotation among work processes.*

(4) *Imposition of penalties or other disciplinary action.*

(5) *Rates of pay or any other form of compensation and changes in compensation.*

(6) *Conditions of work.*

(7) *Hours of work and hours of training provided.*

(8) *Job assignments.*

(9) *Leaves of absence, sick leave, or any other leave.*

(10) *Any other benefit, term, condition, or privilege associated with apprenticeship.*

(b) Each apprenticeship program shall include in its apprenticeship standards and apprenticeship opportunity announcements the following equal opportunity pledge:

[Name of program] will not discriminate against apprenticeship applicants or apprentices based on 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. [Name of program] will take affirmative steps to provide equal opportunity in apprenticeship.

(c) Selection of Apprentices

An apprenticeship program's procedures for selection of apprentices must be included in the written plan for apprenticeship standards submitted to and approved by the Chief DAS, as required under section 212 of title 8 of the California Code of Regulations.

Apprenticeship programs may utilize any method or combination of methods for the selection of apprentices, provided that the selection method(s) used meets the following requirements:

(A) The selection procedure(s) must be uniformly and consistently applied to all applicants and apprentices within each selection procedure utilized.

(B) The selection procedure(s) must comply with title I of the ADA, EEOC's implementing regulations at 29 CFR part 1630, the Fair Employment and Housing Act, and the Civil Rights Council's implementing regulations at sections 11064, et seq. of title 2 of the California Code of Regulations as applicable to apprenticeship program sponsors.

(C) The procedure(s) must not screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test or other selection criteria, as used by the apprenticeship program, is shown to be job-related for the position in question and is consistent with business necessity.

(D) The selection procedure(s) must be facially neutral in terms of 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.

NOTE: Authority cited: Sections 3071 and 3073.9, Labor Code. Reference: Sections 3071, 3073.9, 3075.1 and 3076, Labor Code.