

DEPARTMENT OF INDUSTRIAL RELATIONS
California Apprenticeship Council
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CALIFORNIA APPRENTICESHIP COUNCIL

NOTICE OF PROPOSED RULEMAKING

Equal Opportunity in Apprenticeship

CALIFORNIA CODE OF REGULATIONS

TITLE 8, CHAPTER 2, SUBCHAPTER 1

SECTION 201, et seq.

Notice is hereby given that the California Apprenticeship Council (CAC or Council) proposes to adopt the regulations described below to implement, interpret, and make specific sections 3071, 3073, 3073.1, 3073.9, 3074, 3074.3, 3075, 3075.6, 3075.7, 3078, 3079, 3080, 3081, 3082, 3083, and 3090 of the Labor Code. The proposal would amend sections 201, 206, 212, 212.3, 212.4, and 215 of Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations and add new sections 201.1, 214, 214.1, 214.2, 214.3, and 214.4. The proposed regulations would advance equal opportunity in building and construction trade apprenticeships, including clarifying the responsibility of apprenticeship programs to uphold equal opportunity and establishing standards to protect apprentices and applicants for apprenticeship from discrimination and harassment.

PUBLIC HEARING

The CAC will hold public hearings on this proposal as follows:

Date:	Monday June 19, 2023
Time:	10:00 a.m. until all comments have been received
Location:	Elihu Harris Oakland State Building, Room 15 1515 Clay Street Oakland, CA 94612
Date:	Wednesday, June 21, 2023
Time:	10:00 a.m. until all comments have been received

Location: Junipero Serra State Building, Room 8A
320 W. Fourth Street
Los Angeles, CA 90013

At the hearings, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest below. The CAC requests but does not require that a person who makes oral comments at a hearing also submit the comments in writing.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the attention of Glen Forman at the California Apprenticeship Council, addressed as follows:

- By mail to 1515 Clay Street, Suite 1902, Oakland, CA 94612
- By electronic mail to csuggest@dir.ca.gov
- By facsimile to (510) 286-1448

The CAC will only consider written comments received by 11:59 p.m., June 22, 2023.

Written and oral comments, attachments, and associated contact information (e.g., address, phone, or email) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Labor Code sections 3071, 3073.9, and 3081.

Reference: Labor Code sections 3071, 3073, 3073.1, 3073.9, 3074, 3074.3, 3075, 3075.6, 3075.7, 3078, 3079, 3080, 3081, 3082, 3083, and 3090.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Summary of Existing California Laws and Regulations

Existing law authorizes the CAC to promulgate regulations that establish standards for minimum wages, maximum hours, and working conditions for apprentices in the building and construction trades.

Existing law also authorizes the chief of the Division of Apprenticeship Standards (DAS) of the Department of Industrial Relations (DIR) to evaluate, approve, and withdraw state approval of apprenticeship programs under regulations established by the CAC. CAC

regulations govern how the administrator of apprenticeship investigates and resolves complaints against apprenticeship programs.

Existing law prohibits discrimination and harassment in employment on specified bases and makes it a misdemeanor for any person to willfully discriminate on those bases in any recruitment or apprenticeship program.

The building and construction trades are dominated by men and have historically excluded not only women, but also minorities and people with disabilities. To attract more women, both the trades themselves and the apprenticeship programs that feed into them must become more welcoming to women.

In 2018, the legislature passed Assembly Bill (AB) 2358 (Ch. 675, Stats. 2018) to strengthen California's commitment to prohibiting discrimination and to ensure equal opportunity in apprenticeship for the building and construction trades specifically. AB 2358 borrows much of its language from recently-promulgated federal regulations governing equal employment opportunity in apprenticeship (29 C.F.R. Part 30). AB 2358 replaces the State of California Plan for Equal Opportunity on Apprenticeship (CalPlan), which has been rendered obsolete since its last update in 1986.

AB 2358 expressly prohibits discrimination 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 acceptance into, or participation in, any building or construction trade apprenticeship program. AB 2358 further requires apprenticeship programs in the building and construction trades 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.

Determination of Consistency with Existing State Regulations

The CAC has determined that the proposed regulations are consistent with existing state regulations. The proposed regulations supplement those promulgated by the Civil Rights Department under California's Fair Employment and Housing Act (FEHA), Title 2, Division 4.1, Chapter 5, Subchapter 2. AB 2358 is consistent with the FEHA in protecting the same personal characteristics from discrimination during all aspects of the operation of a building or construction trade apprenticeship program. (Cf. Lab. Code § 3073.9 and Gov't. Code § 12940.)

AB 2358's differences from the FEHA enhance the FEHA's protections. Whereas FEHA regulations apply to apprenticeship programs with five or more "employees," including apprentices, AB 2358 has no size threshold and therefore ensures that even the smallest programs are covered by its antidiscrimination protections. AB 2358 also goes further by enhancing the FEHA's training requirements and directing apprenticeship programs to take affirmative steps in drafting program standards, assigning staff to monitor compliance, and recruiting and orientating apprentices.

With respect to determining whether a building or construction trade apprenticeship program has engaged in a practice prohibited by AB 2358, the statute references the legal standards, defenses, and exceptions applied under the FEHA and its implementing regulations. (Lab. Code § 3073.9, subd. (b).) In addition, the proposed amendments will ensure that government officials enforcing the FEHA are provided relevant information on request and that apprentice selection procedures comply with FEHA regulations.

Comparable Federal Regulations

Comparable federal regulations govern equal employment opportunity in apprenticeship and are applicable to all apprenticeship programs registered with the U.S. Department of Labor's Office of Apprenticeship. (29 C.F.R. Part 30.) Most of California's apprenticeship programs in the building and construction trades are federally registered¹ and subject to these regulations, on which the proposal is modeled. In particular, proposed section 214.1 is modeled on 29 C.F.R. section 30.3(b)(2)(iii), proposed section 214.2 on 29 C.F.R. section 30.3(b)(3), and proposed section 214.3 on 29 C.F.R. section 30.12.

The proposed regulations differ from federal regulations in significant respects. The proposed regulations are broader, covering additional personal characteristics (ancestry, medical condition, marital status, gender, gender identity, gender expression, and military or veteran status) and the minority of California programs that are not registered with the federal Office of Apprenticeship. However, the proposed regulations are narrower in applying only to apprenticeship programs in the building and construction trades rather than to all apprenticeship programs. The federal regulations impose on apprenticeship programs additional responsibilities primarily related to affirmative action plans, which do not exist in state law. (See e.g., 29 C.F.R. §§ 30.3(b) [general duty to engage in affirmative action], 30.4 [adoption of affirmative action programs], and 30.5-30.6 [utilization goals for race, sex, and ethnicity].) Further differences are detailed in the Initial Statement of Reasons.

¹ To be eligible to dispatch apprentices to work on federal public works projects, a California apprenticeship program must be federally registered. Since 2007, the federal government has not recognized state registration because California law conflicts with federal law in limiting the creation of new apprenticeship programs. (See Labor Code section 3075(b).)

Rulemaking Effects

The proposed regulations interpret and make more specific the requirements of AB 2358, clarifying an apprenticeship program's responsibilities and consequences for noncompliance. In particular, the amendments address the following matters:

- Procedures for handling a complaint filed with the administrator of apprenticeship and alleging a violation of AB 2358;
- Procedures for initiating DAS evaluation of programs suspected of violating AB 2358, temporarily suspending the registration of new apprentices by such programs, and ultimately deregistering violators;
- Requirement that an apprenticeship program's governing documents (known as "apprenticeship standards" or "apprenticeship program standards") expressly include AB 2358's antidiscrimination provisions;
- Requirements for annual notice to contractors employing apprentices of the contractors' nondiscrimination obligations under AB 2358;
- Requirements for orientation and annual information sessions for program employees, instructors (who may not be directly employed by the program), and apprentices;
- Requirements for outreach and apprentice recruitment efforts, including targeting all demographic groups within the relevant recruitment area;
- Recordkeeping requirements;
- Requirements for antidiscrimination training of employees, instructors, and apprentices;
- Prohibition of discrimination based on specified characteristics in specified aspects of apprenticeship programs; and
- Requirements for apprentice selection procedures.

Other proposed amendments conform existing regulatory language to AB 2358 and make that language consistent with the new sections.

Anticipated Benefits of the Proposed Regulations

Adopting the proposed amendments would enable full implementation of AB 2358's protections, providing benefits for apprentices in the building and construction trades, their employers, and apprenticeship programs.

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. Finally, apprentices who might have been driven to quit their apprenticeships would benefit both psychologically and monetarily from retaining stable incomes and work schedules.

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. Proper training of employees, instructors, and apprentices about discrimination and harassment could also reduce incidences of work-related violence.

Regulations clarifying AB 2358's requirements would enable apprenticeship programs to implement the 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, advancing social equity generally and promoting the health and welfare of California's workforce.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Council made the following initial determinations.

Mandate on local agencies or school districts: None.

Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code: None.

Other nondiscretionary cost or savings imposed upon local agencies: None.

Cost or savings to any state agency: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Significant, statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on representative private person or business:

The CAC expects no cost impacts on apprenticeship programs in the building and construction trades related to complaint investigation by the administrator of apprenticeship or evaluation by the DAS chief (section 201.1), suspension or deregistration (section 206), revision of program standards (sections 212 and 215(b)), written notice to contractors (section 214), or selection of apprentices (section 215(c)).

The CAC expects negligible cost impacts for compliance with the proposed orientation and periodic information session requirements (section 214.1), outreach and recruitment requirements (sections 214.2 and 215(b)), and record retention requirements (section 214.3). Nearly all California building and construction trade programs are also registered with the federal Office of Apprenticeship and are therefore already subject to 29 C.F.R. Part 30, upon which these requirements are modeled.

For apprenticeship programs that are not registered with the Office of Apprenticeship, the cost impacts would also be negligible. Providing orientation is already a regular practice to onboard employees and apprentices. Inclusion of an equal opportunity component would add little time or cost. Similarly, reminding employees and apprentices of the program's equal opportunity policy can be part of a packet of information that is likely already provided on an annual basis. Outreach recruitment efforts are central to an apprenticeship program's operation and developing lists of recruitment sources that will generate apprentice referrals is already crucial for a program's survival. Outreach to underrepresented communities would be incorporated in this established process. Apprenticeship programs already retain records for a variety of reasons. For instance, programs must retain records in case any question arises about whether an apprentice actually graduated, why an apprentice did not graduate, or the hours of training an apprentice underwent. (See, e.g., Lab. Code § 3073.1.) Segregating medical information from other records is already a legal requirement. (See Cal. Code Regs. tit. 2, § 11069(g); 29 C.F.R. § 1630.14(d)(4).)

Proposed section 214.4 imposes a biannual antidiscrimination and antiharassment training requirement for employees (two hours) and apprentices (one hour). Apprentices are not compensated for instruction time, but programs would bear the cost of the time that their employees spent in training. Employees are compensated at the prevailing wage for journey-level construction workers, currently \$78.10 per hour.² For a program with the average number of employees – 25 – the annual cost of employee time used

² Department of Industrial Relations, "Index 2022-2 general prevailing wage journeyman determinations," accessed November 3, 2022, <https://www.dir.ca.gov/oprl/2022-2/PWD/index.htm>.

for training would be \$1,953. A program would also spend about \$1000 for implementation in the first year, which is an average of costs for obtaining the material for the training courses—from free material from the Civil Rights Department to more detailed courses costing up to \$5,000. Over 10 years, the total cost of meeting the requirements of 214.4 for a program of average size would be \$3,839,110.

Effects on small business:

All 187 registered apprenticeship programs in the building and construction trades are small businesses because they have fewer than 100 employees. All would be affected by the proposed regulations to the extent that they would be required to comply. However, as explained above, costs would be negligible. If, under section 206, registration of new apprentice agreements by a program were suspended or the program were deregistered, the program would be affected in that it would incur a detriment, but deregistration is expected to be extremely rare.

Results of the Economic Impact Assessment

After analyzing the potential economic impact of the proposal, the CAC concludes that it is unlikely that the amendments would create or eliminate any jobs within California, create new businesses or eliminate existing businesses, or expand businesses currently doing business in the state. The amendments would benefit the health and welfare of California residents generally and worker safety in all the ways explained above. (See Anticipated Benefits of the Proposed Regulations.) However, the proposal would not have a discernible benefit for the state's environment beyond encouraging electronic recordkeeping, which reduces paper consumption.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the CAC must determine that no reasonable alternative that it considered or that otherwise has been identified and brought to the attention of the CAC would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The CAC invites interested persons to present statements or arguments about alternatives to the proposed regulations at the scheduled hearing or in writing during the public comment period.

CONTACT PERSONS

Inquiries concerning the proposed rulemaking action may be directed to:

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California Apprenticeship Council
1515 Clay Street, Suite 1902
Oakland, CA 94612
Telephone: (510) 286-3966
Email: GForman@dir.ca.gov

The backup contact person for these inquiries is:

Deneen Phillips
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1515 Clay Street, Suite 1902
Oakland, CA 94612
Telephone: (510) 879-3966
Email: DLPhillips@dir.ca.gov

AVAILABILITY OF RULEMAKING DOCUMENTS

Rulemaking File

As of the date of this notice, the rulemaking file consists of this notice, the Text of Proposed Regulations (express terms), and the Initial Statement of Reasons. Other documents will be added in the course of rulemaking. The entire file, including information upon which the proposal is based, will be available for inspection and copying throughout the rulemaking process at the CAC office above. Rulemaking records may also be accessed on [the CAC's website](#) or by contacting Deneen Phillips.

Modified Text

After holding the hearing and considering all timely and relevant comments received, the CAC may adopt the proposed regulations substantially as described in this notice. If the CAC makes modifications which are sufficiently related to the originally proposed text, the agency will make the modified text (with changes clearly indicated) available to the public and accept written comments for at least 15 days before adopting the regulations as revised. Any such modifications will also be posted on [the CAC's website](#).

Final Statement of Reasons

Upon completion, the Final Statement of Reasons will be available as indicated above along with the other rulemaking documents.