

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3081 and 3082, Labor Code.

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Article 2. Definitions

§205. Definitions.

(a) “Journeyman,” “journeyperson,” and “journeyworker” and “journey level worker” ~~mean~~ means a person who has either

- (1) completed an accredited apprenticeship in his/her craft, or
- (2) ~~who has~~ completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft which has workers classified as ~~journeyman~~ journeyworkers in the apprenticeable occupation.

These terms shall be understood as having the same meaning and interchangeable, with “journeyworker” and its plural “journeyworkers” being the Council’s preferred designation at the time it was added to this subsection.

(b) “Instructor” means a person who has either

- (1) completed an accredited apprenticeship in his/her craft, or
- (2) who has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft but may not necessarily be designated as a journeyman.

(c) An “Apprenticeable Occupation” is one which requires independent judgment and the application of manual, mechanical, technical, or professional skills and is best learned through an organized system of on-the-job training together with related and supplemental instruction. Each “Apprenticeable Occupation” is defined by the work processes contained in the approved apprenticeship standards under which apprentices are training.

(d) “Registration of an Apprentice Agreement” means the acceptance and recording thereof by the Division of Apprenticeship Standards which serves as evidence of the participation of the apprentice in a specific apprenticeship program.

- (e) “Apprenticeship Program” means a comprehensive plan containing, among other things, apprenticeship program standards, committee rules and regulations, related and supplemental instruction course outlines and policy statements for the effective administration of that apprenticeable occupation.
- (f) “Apprenticeship Program Standards” means that written document containing among other things all the terms and conditions for the qualification, recruitment, selection, employment and training, working conditions, wages, employee benefits, and other compensation for apprentices and all other provisions and statements including attachments as required by the Labor Code and this Chapter which, when approved by the Chief DAS, shall constitute registration of such, and authority to conduct that program of apprenticeship in the State of California.
- (g) “Apprenticeship Program Sponsor” means a joint apprenticeship committee, a unilateral labor or management committee, or an individual employer program.
- (h) “Related and Supplemental Instruction” means an organized and systematic form of instruction designed to provide the apprentice with knowledge including the theoretical and technical subjects related and supplemental to the skill(s) involved.
- (i) “Competent Evidence” as used in Section 224 means a transcript or abstract of the training records required to be maintained pursuant to Section 212~~(e)(6)~~(b)(7), or an attestation by the apprentice program sponsor stating that all training has been fully completed, on forms to be provided by the Division of Apprenticeship Standards, demonstrating that the apprenticeship program has been fully complete, certified by the apprenticeship program sponsor and endorsed by a representative of the Division of Apprenticeship Standards.
- (j) An “Interested Party” for the purpose of application for approval of an apprenticeship program, means an employer, employer organization or association, a group of employers, employer associations or organizations, an employee association or organization, or employee representatives, a group of employee representatives, associations or organizations, labor and/or management groups or any combination thereof whose interest may be affected by the apprenticeship program if approved.
- (k) “Maintenance” is defined as routine, recurring and usual work for the preservation, protection and keeping of any facility for its intended purposes in a safe and continually usable condition.

(l) The term “Chief DAS” means the Chief of the Division of Apprenticeship Standards.

(m) “Employed as an apprentice” in the building and construction trades industry for the purpose of Labor Code Section ~~3098~~ 3080.5 means employment pursuant to the approved standards of apprenticeship of the Program, under the supervision of ~~journeyman/men~~ journeyworker(s), where the apprentice is receiving at least the minimum wage applicable to the apprentice's period of apprenticeship as provided for in this chapter.

(n) “Geographic Area of Operation” of an apprenticeship program means the geographic area in which the program regularly operates and trains apprentices.

(o) “Acceptable electronic format” means either of the following:

(1) A tilde (~) delimited text string for each apprentice action containing the fields specified by the DAS’ “Apprenticeship Electronic Data Interchange Protocol” and submitted via Secure File Protocol Transfer (SFTP). A static Internet Protocol address will be required by the SFTP server for security.

(2) Direct entry and submission of report data through an online platform on the DAS website at <https://www.dir.ca.gov/das>.

(p) “Work Process” is a skill or task, stated in a program’s apprenticeship standards, in which the apprentice will receive supervised work experience and training on the job.

(q) “Registered Apprentice” means a person who is training under and in accordance with apprenticeship standards that have been approved by the Chief DAS, and who is party to an apprentice agreement that has been accepted by the Division of Apprenticeship Standards.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3071, 3073, 3075, 3075.7, 3077, 3079, 3080.5, and ~~3086 and 3090~~, Labor Code.

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Article 10. Required Apprentices On Public Works Contract

§227. Scope and Application.

These regulations shall govern ~~all actions pursuant to provisions of Division 2, Part 7, Chapter 1,~~

Labor Code Sections 1777.5 and 1777.7 the interpretation of Labor Code Section 1777.5, and the substantive requirements of Labor Code Section 1777.7 applicable to contractors or subcontractors, when an affected contractor or subcontractor has obtained review of a civil wage and penalty assessment issued by the Labor Commissioner which includes a determination of penalties assessed under subdivisions (a) and (b) of Labor Code Section 1777.7.

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Sections 1777.5, 1777.6 and 1777.7, Labor Code. *Hydrostorage, Inc. v. Northern California Boilermakers Local Joint Apprenticeship Committee*, (1989) 891 F.2d 719.

§228. Definitions.

For the purpose of this Article 10:

(a) ADMINISTRATOR means the Administrator of Apprenticeship or a duly authorized representative.

(b) CHIEF means the Chief of the Division of Apprenticeship Standards or a duly authorized representative.

(c) CONTRACTOR means a general, prime, specialty or subcontractor.

(d) COUNCIL means the California Apprenticeship Council.

(e) DAS means the Division of Apprenticeship Standards.

(f) DATE OF AGREEMENT OR CONTRACT AWARD means, whichever is earlier, the date the Public Work contract was signed by the party authorizing performance under the Public Work, or the date a Notice to Proceed was issued.

~~(g) WORKER means any journeyman as defined in Section 205(a) of Title 8 performing work of an apprenticeable occupation on a public works job, except a licensee who is a sole proprietor.~~

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Sections 1777.5 and 1777.7, Labor Code.

§229. Service, Notice, and Computation of Time.

(a) Except where otherwise provided for in these Regulations, all documents and notices required to be served pursuant to this section or Article shall be served personally, or by certified mail, or by first class mail on the party to be served or attorney or representative of Record.

(b) Service shall be prior or simultaneous to filing. Proof of service, by means of a written declaration under penalty of perjury stating the name(s) and address(es) of party(s) served and the date and manner of service, shall be attached to the papers filed.

(c) In computing the time within which a right may be exercised or an act is to be performed, the first day shall be excluded and the last day shall be included. If the last day is a Saturday, Sunday or legal holiday, time shall be extended to the next weekday that is not a holiday. For documents or notices served by first class mail the time for performing any act shall be extended pursuant to the Code of Civil Procedure Section 1013.

(d) ~~A request for review which is transmitted to the Administrator within 30 days after service of the order of debarment or civil penalty will be considered timely if the request was sent to the Administrator by first class mail or facsimile with a proof of service showing the date of service was within 30 days after service of the order of debarment or civil penalty.~~ A Notification of Contract Award Information pursuant to Section 230 and Request for Dispatch of Apprentices pursuant to Section 230.1 shall also be subject to the following requirements.

(1) The Notice or Request shall be sent by first class and certified mail, return receipt requested, or facsimile or e-mail. If mailed, the contractor or subcontractor shall retain a copy of all such requests, including copies of U.S. Postal Service receipts as proof of mailing. If transmitted electronically by facsimile, the contractor or subcontractor shall retain a copy of all such requests, including an electronic copy of confirmation that the facsimile was received by the recipient and date received. If transmitted by e-mail, the contractor or subcontractor shall retain a copy of all such e-mail transmissions and bearing the date of the e-mail transmissions.

(2) Upon written request, the contractor or subcontractor shall provide a copy of all such notifications or requests to the Labor Commissioner. In any review proceeding under Labor Code Section 1742(b), the contractor or subcontractor shall have the burden of proving that the notification or request was timely submitted.

(e) A request to review a civil wage and penalty assessment issued pursuant to Labor Code Section 1777.7, shall be governed by the notice, service, and computation of time requirements specified in the prevailing wage hearing regulations at 8 C.C.R. §§ 17201 et seq. rather than this section.

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Section 1777.7, Labor Code.

§230.1. Employment of Apprentices on Public Works.

(a) Contractors, as defined in Section 228 to include general, prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required one hour of work performed by an apprentice for every five hours of labor performed by a journeyman, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 or this subchapter. Unless an exemption has been granted, the contractor shall employ apprentices for the number of hours computed above before the end of the contract. Contractors who are not already employing sufficient registered apprentices (as defined by Labor Code Section 3077) to comply with the one-to-five ratio must request the dispatch of required apprentices from the apprenticeship committees providing training in the applicable craft or trade and whose geographic area of operation includes the site of the public work by giving the committee written notice of at least 72 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. If the apprenticeship committee from which apprentice dispatch(es) are requested does not dispatch apprentices as requested, the contractor must request apprentice dispatch(es) from another committee providing training in the applicable craft or trade in the geographic area of the site of the public work, and must request apprentice dispatch(es) from each such committee, either consecutively or simultaneously, until the contractor has requested apprentice dispatches from each such committee in the geographic area. All requests for dispatch of apprentices shall be in writing, sent by first class mail, facsimile or email. Except for projects with less than 40 hours of journeyman work, each request for apprentice dispatch shall be for not less than an 8 hour day per each apprentice, or 20% of the estimated apprentice hours to be worked for an employer in a particular craft or trade on a project, whichever is greater, unless an

employer can provide written evidence, upon request of the committee dispatching the apprentice or the Division of Apprenticeship Standards, that circumstances beyond the employer's control prevent this from occurring. If a non-signatory contractor declines to abide by and comply with the terms of a local committee's standards, the apprenticeship committee shall not be required to dispatch apprentices to such contractor. Conversely, if in response to a written request no apprenticeship committee dispatches, or agrees to dispatch during the period of the public works project any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the apprenticeship committee's standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices for the remainder of the project, provided that the contractor made the request in enough time to meet the above-stated ratio. If an apprenticeship committee dispatches fewer apprentices than the contractor requested, the contractor shall be considered in compliance if the contractor employs those apprentices who are dispatched, provided that, where there is more than one apprenticeship committee able and willing to unconditionally dispatch apprentices, the contractor has requested dispatch from all committees providing training in the applicable craft or trade whose geographic area of operation include the site of the public work. Nothing in this section shall affect the right of a Contractor who participates in and employs registered apprentices from programs approved under Labor Code Section 3075 outside the geographic area of the public work from employing said apprentice(s) on the site of the public work in order to meet the ratio requirement of Labor Code Section 1777.5.

(b) Apprentices employed on public works shall be paid the applicable apprentice prevailing per diem wage rate, available from DAS, and derived from the Director's survey of wages paid on public works in the geographic area of the craft or trade. DAS shall refer complaints alleging any contractor's failure to pay the proper apprentice prevailing wage rate on a public works project to the Division of Labor Standards Enforcement for investigation and appropriate action.

~~(c) Apprentices employed on public works can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Where an employer employs apprentices under the rules and regulations of the California Apprenticeship Council, as set forth in Labor Code Section 1777.5(c)(2), apprentices employed on public works must at all times~~

~~work with or under the direct supervision of journeyman/men. The on-the-job training shall be in accordance with the apprenticeship standards and apprenticeship agreement under which the apprentice is training, provided that a contractor shall not be subject to any financial or administrative obligations to a trust fund or employee benefit plan unless the contractor has so agreed. Apprentices employed pursuant to Labor Code section 1777.5 shall be registered apprentices who are training under apprenticeship standards that include the work processes that the contractor will perform on the project. Contractors must assign apprentices work that is included in the apprenticeship standards under which the apprentices are training. Apprentices on public works cannot be assigned work other than that which is stated in the work processes of the apprenticeship standards under which the apprentices are training. Where an employer employs apprentices under the rules and regulations of the California Apprenticeship Council, as set forth in Labor Code Section 1777.5(c)(2), apprentices employed on public works must at all times work with or under the direct supervision of a journeyworker. The on-the-job training shall be in accordance with the apprenticeship standards and apprenticeship agreement under which the apprentice is training, provided that a contractor shall not be subject to any financial or administrative obligations to a trust fund or employee benefit plan unless the contractor has so agreed.~~

(d) The provisions of this regulation shall not apply to contractors on public works projects that were bid prior to July 1, 2009. Such contractors shall comply with the version of this regulation that was in effect prior to July 1, 2009.

Note: Authority cited: Section 1777.7, Labor Code. Reference: Section 1777.5, Labor Code.

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[Sections 231 and 232 through 232.7 are repealed]

§231. Filing of Complaints.

~~(a) Complaints alleging noncompliance with Labor Code Section 1777.5 may be filed with the Chief by any person. Such complaints shall contain the following:~~

~~(1) The full name and address of the party filing the complaint.~~

~~(2) The full name and address of the party(s) against whom the complaint is made (hereinafter referred to as the “respondent”).~~

~~(3) The name and address of the general contractor if the party against whom the complaint is filed is a subcontractor.~~

~~(4) The full name and address of the public work awarding body.~~

~~(5) The location (address or geographic location) of the public work site.~~

~~(6) A clear and concise statement of the facts constituting the basis for the complaint, date(s) of the alleged violation(s) and where appropriate, substantiation that respondent has: (A) failed to provide the applicable Apprenticeship Committee with notice of contract award information; and/or (B) failed to comply with the required apprentice to journeyman ratio; and/or (C) failed to properly employ apprentice(s) by assigning apprentice(s) to perform work outside the craft or trade of the apprenticeable occupation; and/or (D) failed to make required contributions to the Council or to the applicable apprenticeship program; and/or (E) failed to provide the applicable Apprenticeship Committee with a verified statement of the journeyman and apprentice hours performed on the contract; and/or (F) otherwise violated Labor Code Section 1777.5.~~

~~(7) The apprenticeable occupation.~~

~~(8) A declaration by the person signing the complaint under penalty of perjury that its contents are true and correct to the best of his/her knowledge and belief.~~

~~(9) The signature of the person filing the complaint, or in the case of an organization, an authorized officer or agent.~~

~~(10) Proof of Service of the complaint on the respondent, and in the case of a respondent subcontractor also on the general and/or prime contractor, pursuant to the provisions of Section 229.~~

~~(b) The Chief shall investigate complaints and provide written notice to the complaining party, if any, and the respondent of the determination. Whether or not there is a complaint, the Chief shall conduct an investigation before making a determination that a violation has occurred.~~

~~(c) The filing of a complaint is not a prerequisite to the initiation of an investigation by the Chief or to a determination by the Chief that a violation has occurred.~~

~~(d) Before issuing a determination that a violation has occurred, the Chief shall provide the affected contractor(s) with written notice of the allegations and a reasonable opportunity to respond.~~

~~(e) The Chief, on his/her own initiative, may issue a non-willful Notice when there is cause to believe that there has been a non-willful violation of Labor Code Section 1777.5. Such Notice shall be filed within six (6) months from the date of the alleged violation and shall contain the information required in subpart (b) of this section, but need not be under penalty of perjury. The Chief shall serve notice of a determination of a civil penalty or debarment on the affected contractor(s). The notice shall set forth the procedure set forth in Labor Code section 1777.7(c) for obtaining review of the Chief's decision. For purposes of commencing a period of debarment, the date of the determination of noncompliance by the Chief shall be the first date on which the Chief's decision is no longer subject to review.~~

~~(f) Nothing in this subchapter shall prevent the Chief from entering into a settlement with the affected contractor, either before or after a notice of a determination.~~

~~(g) If the Chief determines that a contractor has failed to submit contract award information and/or a verified statement of the journeyman and apprentice hours performed, the contractor shall use certified mail as the means of making subsequent submissions and maintain U.S. Postal Service return receipts as proof of mailing. The certified mail requirement shall end after two years from the notice of the determination.~~

~~(h) For purposes of Labor Code Section 1777.7, a contractor knowingly violates Labor Code Section 1777.5 if the contractor knew or should have known of the requirements of that Section and fails to comply, unless the failure to comply was due to circumstances beyond the contractor's control. There is an irrebuttable presumption that a contractor knew or should have known of the requirements of Section 1777.5 if the contractor had previously been found to have violated that Section, or the contract and/or bid documents notified the contractor of the obligation to comply with Labor Code provisions applicable to public works projects, or the contractor had previously employed apprentices on a public works project.~~

~~NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Sections 1770, 1773, 1777.5 and 1777.7, Labor Code.~~