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SB-530 Construction industry: discrimination and harassment prevention. (2019-2020)

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Senate Bill No. 530

CHAPTER 722

An act to amend Section 12950.1 of the Government Code, and to amend Section 3073.9 of, and to add Chapter 4.3 (commencing with Section 107.5) to Division 1 of, the Labor Code, relating to employment.

[Approved by Governor October 10, 2019. Filed with Secretary of State October 10, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 530, Galgiani. Construction industry: discrimination and harassment prevention.

(1) The California Fair Employment and Housing Act makes specified employment practices unlawful, including the harassment of an employee directly by the employer or indirectly by agents of the employer with the employer's knowledge. Under existing law, the Department of Fair Employment and Housing administers these provisions. Existing law, by January 1, 2021, requires a specified employer with 5 or more employees to provide at least 2 hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California and, after that date, once every 2 years. Existing law requires new nonsupervisory employees to be provided training within 6 months of hire and new supervisory employees to be provided training within 6 months of their assumption of a supervisory position. Existing law establishes a separate timeline for seasonal, temporary, or other employees that are hired to work for less than 6 months that requires an employer, beginning January 1, 2020, to provide the training within 30 days after the hire date or within 100 hours worked, whichever occurs first.

(2) Existing law creates the Division of Labor Standards Enforcement within the Department of Industrial Relations and authorizes the Division of Labor Standards Enforcement to enforce the provisions of the Labor Code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board, or commission. Existing law provides for apprenticeship programs within the Division of Apprenticeship Standards within the Department of Industrial Relations, sponsored by specific entities and employers, and requires the Chief of the Division of Apprenticeship Standards to perform various functions with respect to apprenticeship programs and the welfare of apprentices. Existing law also establishes the California Apprenticeship Council within the Division of Apprenticeship Standards, and requires the council to issue rules and regulations which establish standards for minimum wages, maximum hours, and working conditions for apprentice agreements in the building and construction trades and for firefighter occupations, and to issue rules and regulations governing equal opportunities in apprenticeship affirmative action programs which include women and minorities in apprenticeship and other on-the-job training, and criteria for selection procedures, as specified.

(3) Existing law prohibits a building and construction trades apprenticeship program from discriminating against an apprentice or applicant for apprenticeship on the basis of certain enumerated categories, including, race, sex, religious creed, or national origin, with regard to acceptance into, or participation in, the program, as specified. Existing law requires the apprenticeship program to develop and implement procedures to ensure that its apprentices are not harassed or discriminated against. Existing law requires

the apprenticeship program to provide antiharassment and antidiscrimination training to all apprentices, instructors, and employees of the apprenticeship program, as specified. Existing law authorizes the council to issue rules and regulations as necessary to implement these provisions.

(4) This bill would authorize a building and construction trades apprenticeship program to provide prevention of harassment training programs for journey-level workers, and would require the apprenticeship program to maintain certain records and to issue a certificate of completion to the apprentice or journey-level worker.

(5) This bill would extend to January 1, 2021, the date on which an employer identified in paragraph (1) is required to begin providing training to seasonal, temporary, or other employees hired to work for less than 6 months.

(6) The bill would authorize an employer that employs workers pursuant to a multiemployer collective bargaining agreement in the construction industry to satisfy the sexual harassment training and education requirement specified in paragraph (1) by demonstrating that an employee has received the training in one of specified circumstances within the past 2 years. The bill would require verification that an employee has undergone that training within the past 2 years. The bill would require the employer to provide the training for any unverified employee. The bill would require a state-approved apprenticeship program, labor management training trust, or labor management cooperation committee to maintain the certificate of completion of training for a period of not less than 4 years. The bill would require the apprenticeship program, labor management training trust, or labor management cooperation committee to maintain a database of journey-level worker and apprentice training and to provide verification of an employee's or apprentice's training status upon the request of an employer that is a party to the multiemployer collective bargaining agreement. The bill would authorize a qualified trainer to provide prevention of harassment training on behalf of an apprenticeship program, a labor management training trust, or a labor management cooperation committee. The bill would also authorize an apprenticeship program, labor management training trust, or labor management cooperation committee to provide training by use of a specified online training course. The bill would prohibit an apprenticeship program, a labor management training trust, or a labor management cooperation committee from incurring any liability for providing training and education or for maintaining records pursuant to the above-described provisions. The bill would define terms for these purposes.

(7) This bill would require the Division of Labor Standards Enforcement to develop recommendations for an industry-specific harassment and discrimination prevention policy and training standard for use by employers in the construction industry, as defined. The bill would require the Director of Industrial Relations to convene an advisory committee by March 1, 2020, consisting of specified representatives from the construction industry and state agencies to assist the Division of Labor Standards Enforcement in developing the policy. The bill would require the Division of Labor Standards Enforcement to report to the Legislature by January 1, 2021, with recommendations for a harassment and discrimination prevention policy and training standard for the construction industry and recommendations for legislation to implement such a standard.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12950.1 of the Government Code is amended to read:

12950.1. (a) (1) By January 1, 2021, an employer having five or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California. Thereafter, each employer covered by this section shall provide sexual harassment training and education to each employee in California once every two years. New nonsupervisory employees shall be provided training within six months of hire. New supervisory employees shall be provided training within six months of the assumption of a supervisory position. An employer may provide this training in conjunction with other training provided to the employees. The training may be completed by employees individually or as part of a group presentation, and may be completed in shorter segments, as long as the applicable hourly total requirement is met. An employer who has provided this training and education to an employee in 2019 is not required to provide refresher training and education again until two years thereafter. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. The department shall provide a method for employees who have completed the training to save electronically and print a certificate of completion.

(2) An employer shall also include prevention of abusive conduct as a component of the training and education specified in paragraph (1).

(3) An employer shall also provide training inclusive of harassment based on gender identity, gender expression, and sexual orientation as a component of the training and education specified in paragraph (1). The training and education shall include practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation, and shall be presented by trainers or educators with knowledge and expertise in those areas.

(b) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(c) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(d) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(e) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination. This section shall not be construed to override or supersede statutes, including, but not limited to, Section 1684 of the Labor Code, that meet or exceed the training for nonsupervisory employees required under this section.

(f) Except as provided in subdivision (l), beginning January 1, 2021, for seasonal, temporary, or other employees that are hired to work for less than six months, an employer shall provide training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. In the case of a temporary employee employed by a temporary services employer, as defined in Section 201.3 of the Labor Code, to perform services for clients, the training shall be provided by the temporary services employer, not the client.

(g) Beginning January 1, 2020, sexual harassment prevention training for migrant and seasonal agricultural workers, as defined in the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801, et seq.), shall be consistent with training for nonsupervisory employees pursuant to paragraph (8) of subdivision (a) of Section 1684 of the Labor Code.

(h) (1) For purposes of this section only, "employer" means any person regularly employing five or more persons or regularly receiving the services of five or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(2) For purposes of this section, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

(i) For purposes of providing training to employees as required by this section, an employer may develop its own training module or may direct employees to view the online training course referenced in subdivision (j) and this shall be deemed to have complied with and satisfied the employers' obligations as set forth in this section and Section 12950.

(j) The department shall develop or obtain two online training courses on the prevention of sexual harassment in the workplace in accordance with the provisions of this section. The course for nonsupervisory employees shall be one hour in length and the course for supervisory employees shall be two hours in length.

(k) The department shall make the online training courses available on its internet website. The online training courses shall contain an interactive feature that requires the viewer to respond to a question periodically in order for the online training courses to continue to play. Any questions resulting from the online training course described in this subdivision shall be directed to the trainee's employer's human resources department or equally qualified professional rather than the department.

(l) (1) An employer that employs workers pursuant to a multiemployer collective bargaining agreement in the construction industry may satisfy the requirements of subdivision (a) or (f) by demonstrating that the employee has received the training required by subdivision (a) within the past two years under any of the following circumstances:

(A) While the employee was employed by another employer that is also signatory to a multiemployer collective bargaining agreement with the same trade in the building and construction industry.

(B) While the employee was an apprentice registered in a building and construction trades apprenticeship program approved by the Division of Apprenticeship Standards.

(C) Through a building and construction trades apprenticeship program approved by the Division of Apprenticeship Standards, a labor management training trust, or labor management cooperation committee. For purposes of this subdivision, "labor management cooperation committee" shall mean a committee that is established pursuant to Section 175a of Title 29 of the United States Code.

(2) For purposes of this subdivision, "multiemployer collective bargaining agreement" means a bona fide collective bargaining agreement to which multiple employers are signatory, including predecessor and successor agreements.

(3) An employer shall require verification that an employee has undergone prevention of harassment training pursuant to this subdivision within the past two years. The employer shall provide prevention of harassment training pursuant to subdivision (a) for any employee for whom verification cannot be obtained.

(4) A state-approved apprenticeship program, labor management training trust, or labor management cooperation committee shall maintain a certificate of completion of training for each person to whom the entity has provided prevention of harassment training pursuant to this subdivision for a period of not less than four years. The apprenticeship program, labor management training trust, or labor management cooperation committee shall maintain a database of journey-level worker and apprentice training that entity has provided and shall provide verification of an employee's or apprentice's prevention of harassment training status upon the request of an employer that is a party to the multiemployer collective bargaining agreement.

(5) (A) A qualified trainer may provide prevention of harassment training on behalf of an apprenticeship program, labor management training trust, or labor management cooperation committee.

(B) A "qualified trainer," for purposes of this subdivision, is any person who, through a combination of training and experience, has the ability to train employees about the following:

(i) How to identify behavior that may constitute unlawful harassment, discrimination, or retaliation under both California and federal law.

(ii) What steps to take when harassing behavior occurs in the workplace.

(iii) How to report harassment complaints.

(iv) Supervisory employees' obligation to report harassing, discriminatory, or retaliatory behavior of which they become aware.

(v) How to respond to a harassment complaint.

(vi) The employer's obligation to conduct a workplace investigation of a harassment complaint.

(vii) What constitutes retaliation and how to prevent it.

(viii) Essential components of an antiharassment policy.

(ix) The effect of harassment on harassed employees, coworkers, harassers, and employers.

(C) A "qualified trainer" includes, but is not limited to, an attorney admitted to the State Bar of California with at least two years of experience practicing employment law, a human resources professional with at least two years of practical experience in prevention of harassment training, investigation, and advising employers in the prevention of harassment, or any other person who has received training in the provision of prevention of harassment training from a qualified trainer.

(6) An apprenticeship program, labor management training trust, or labor management cooperation committee may also provide training by use of the online training courses referenced in subdivision (j).

(7) An apprenticeship program, labor management training trust, or labor management cooperation committee shall not incur any liability for providing prevention of harassment training or for maintaining records pursuant to this subdivision.

SEC. 2. Chapter 4.3 (commencing with Section 107.5) is added to Division 1 of the Labor Code, to read:

CHAPTER 4.3. Discrimination and Harassment Prevention in the Construction Industry

107.5. (a) The Division of Labor Standards Enforcement shall develop recommendations for an industry-specific harassment and discrimination prevention policy and training standard for use by employers in the construction industry. For purposes of this subdivision, "in the construction industry" means performing work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as

described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The training standard shall focus on preventing harassment and discrimination in the construction industry on the basis of sex, race, and national origin, in addition to the other categories protected under Section 12940 of the Government Code.

(b) To assist in developing this standard, the Director of Industrial Relations shall convene an advisory committee to recommend minimum standards for a harassment and discrimination prevention policy and training program specific to the construction industry. The advisory committee shall be composed of representatives from recognized or certified collective bargaining agents that represent construction workers, construction industry employers or employer associations, labor-management groups in the construction industry, nonprofit organizations that represent women in the construction industry, and other related subject matter experts, and shall also include representatives of the Division of Labor Standards Enforcement, the Division of Occupational Safety and Health, and the Department of Fair Employment and Housing. The director shall convene the advisory committee no later than March 1, 2020. The advisory committee shall consider the requirements of Section 12950.1 of the Government Code when developing the recommended minimum standard.

(c) The Division of Labor Standards Enforcement shall provide a report to the Legislature by no later than January 1, 2021, in compliance with Section 9795 of the Government Code, with recommendations for an industry-specific harassment and discrimination prevention policy and training standard for use by employers in the construction industry and recommendations for legislation that would need to be enacted to implement such a standard.

SEC. 3. Section 3073.9 of the Labor Code is amended to read:

3073.9. (a) No building and construction trades apprenticeship program shall discriminate against any 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) In implementing this section, the division and the Administrator of Apprenticeship shall look to the legal standards, defenses, and exceptions applied under the Fair Employment and Housing Act, its implementing regulations, and any interpretive guidance issued by the Department of Fair Employment and Housing in determining whether a building and construction trades apprenticeship program has engaged in a practice prohibited by subdivision (a).

(c) Each building and construction trades apprenticeship program shall take affirmative steps to provide equal opportunity in apprenticeship, including:

- (1) The apprenticeship program shall designate one or more individuals with appropriate authority under the program, such as an apprenticeship coordinator, to be responsible and accountable for overseeing the program's commitment to equal opportunity in apprenticeship. The designees shall have the resources of, support of, and access to, the apprenticeship program leadership, to ensure effective implementation. The designees will be responsible for all of the following:
 - (A) Monitoring all apprenticeship activity to ensure compliance with the nondiscrimination obligations required by this section.
 - (B) Maintaining records required under this section.
 - (C) Generating and submitting reports as may be required by the division.

(2) The apprenticeship program shall inform all applicants for apprenticeship, apprentices, instructors, and employees of the apprenticeship program of its commitment to equal opportunity. The apprenticeship program shall require that apprentices, instructors, and employees of the apprenticeship program take the necessary action to aid the apprenticeship program in meeting its nondiscrimination obligations under this section. The apprenticeship program, at a minimum, shall do all of the following:

(A) Publish its equal opportunity pledge set forth in subdivision (c) in the program's apprenticeship standards, and in appropriate publications, such as apprentice and employee handbooks, policy manuals, newsletters, or other documents disseminated by the apprenticeship program that otherwise describe the nature of the program.

(B) Post its equal opportunity pledge set forth in subdivision (c) on bulletin boards, including through electronic media, such that it is accessible to apprentices and applicants for apprenticeship.

(C) 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, and to provide the training required by subparagraph (A) of paragraph (4).

(D) Provide annual notice to any contractor that employs apprentices of the apprenticeship 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).

(E) Maintain records necessary to demonstrate compliance with these requirements, including records of complaints, and make them available to the Division of Apprenticeship Standards upon request.

(3) The apprenticeship program shall implement measures to ensure that its outreach and recruitment efforts for apprentices extend to all persons available for apprenticeship within the apprenticeship program's relevant recruitment area without regard to the characteristics described in subdivision (a).

(4) The apprenticeship program shall develop and implement procedures to ensure that its apprentices are not harassed or discriminated against on any of the bases described in subdivision (a), and to ensure that its apprenticeship program is free from intimidation and retaliation. To promote an environment in which all apprentices feel safe, welcomed, and treated fairly, the apprenticeship program shall ensure all of the following steps are taken:

(A) Providing antiharassment and antidiscrimination training to all apprentices, instructors, and employees of the apprenticeship program. This training shall not be a mere transmittal of information, but shall include participation by trainees, such as attending a training session in person or completing interactive training online. The training content shall include, at a minimum, communication of the following:

(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 as described in subparagraph (C).

(iv) The procedure for filing a complaint with the Administrator of Apprenticeship pursuant to Section 201 of Title 8 of the California Code of Regulations.

(B) Making all facilities and apprenticeship activities available without regard to the characteristics described in subdivision (a) of this section except that if the apprenticeship program provides restrooms or changing facilities, the apprenticeship program may provide separate or all-gender toilets and changing facilities, provided that all individuals have equal access to facilities consistent with their gender identity.

(C) Establishing and implementing procedures for handling and resolving internal complaints about harassment or discrimination, including, but not limited to, the following:

(i) Designation of an individual or individuals responsible to receive complaints by apprentices of harassment or discrimination.

(ii) Procedures for prompt, thorough, and impartial investigation of complaints.

(iii) Procedures to protect the confidentiality of complaints to the extent possible and consistent with law.

(iv) Policies for immediate and appropriate corrective action when the program determines that harassment or discrimination has occurred, including policies for denying the dispatch of apprentices to, or revoking the training

certification of, contractors that have been found by the apprenticeship program to have engaged in or permitted harassment of or discrimination against apprentices.

(v) Protections against retaliation for apprentices who have reported instances of harassment or discrimination.

(d) Each building and construction trades apprenticeship program shall include in its apprenticeship standards the following equal opportunity pledge:

(1) [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.

(2) The nondiscrimination categories listed in this pledge may be broadened to conform to consistent federal, state, and local requirements. Programs may include additional protected categories, but may not exclude any of the categories protected by this section.

(e) An apprenticeship program may provide prevention of harassment training programs for journey-level workers.

(f) An apprenticeship program shall maintain records reflecting the prevention of harassment training provided, dates of training, and apprentice or journey-level worker attendance, and shall issue a certificate of completion to the apprentice or journey-level worker.

(g) The California Apprenticeship Council may issue rules and regulations as necessary to implement this section, including about what records apprenticeship programs shall maintain to demonstrate compliance with the requirements of this section. The division shall comply with the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(h) (1) Existing registered building and construction trades apprenticeship programs shall comply with all obligations of this section within 180 days of the effective date of this act.

(2) A new building and construction trades apprenticeship program registering with the Division of Apprenticeship Standards after the effective date of this act shall comply with all obligations of this section upon registration or within 180 days after the effective date of this section, whichever is later.

(i) Failure to comply with the requirements of this section may be grounds for an audit in accordance with Section 3073.1, a complaint to the Administrator of Apprenticeship in accordance with Section 201 of Title 8 of the California Code of Regulations, or other actions in accordance with Section 212.4 of Title 8 of the California Code of Regulations. This section shall not create, or serve as the basis for, a private right of action, or limit any existing private right of action.