

TITLE 22. EMPLOYMENT TRAINING PANEL

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Employment Training Panel (Panel) proposes to amend Sections 4402.2, 4406, 4409, 4420, 4420.5, and 4426 of the California Code of Regulations. The initial Statement of Reasons and Express Text of the proposed action are accessible through the *Pending Regulatory Actions* link on the Home Page of the ETP website (www.etp.ca.gov).

AUTHORITY AND REFERENCE

The Panel's rulemaking authority is contained in Unemployment Insurance (UI) Code Section 10205(m). In general, the proposed regulatory action will implement, interpret and make specific UI Code Section 10200 *et seq.*

The Panel is implementing, interpreting and making specific Unemployment Insurance Code Section 10209(d), for both proposed actions.

INFORMATIVE DIGEST

A summary of each proposed amendment and its purpose is set forth below.

1. Amend Section 4402.2 Critical Proposal

Under existing Section 4402.2, Critical Proposals may be approved for reimbursement at up to 25% above the standard rates for Retraining and New Hire training. The Panel may also modify retention, turnover rate, laboratory training and other basic program requirements on a case-by-case basis.

The Critical Proposal designation is made, in the first instance, by the Executive Director based on four specific factors in Section 4402.2(a)(2). However, Section 4402.2(a)(3) provides: "Critical proposals shall be initiated by a participating State of California economic development entity..." The proposed amendment would delete this inconsistent statement and make other classifications.

2. Amend Section 4406, New Hire Training

Existing Section 4406(a) sets a dollar cap on New Hire Training based on the average cost-per-trainee paid in the prior Fiscal Year. At the current reimbursement rate of \$17 per training hour, the average cost-per-trainee is now capped at \$4,854.

On August 11, 2009, the Panel increased the New Hire Training Rate from \$17 to \$20 per training hour. Unless the dollar cap is revised, this increase in the New Hire Training Rate will reduce the maximum allowable training hours.

This amendment would eliminate the dollar cap based on the average cost-per-trainee paid in the prior Fiscal Year. In place of the numerical dollar cap, the Panel would test the concept of a 260-hour cap, to be applied on a case-by-case basis.

After the conclusion of a test period, the Panel will implement a specific hourly cap for New Hire Training in a new or amended regulation.

3. Amend Section 4409, Special Employment Training Projects

Under existing Section 4409(a), the Panel may allocate up to 10% of the annually available training funds for Special Employment Training (SET). The 10% allocation was increased to 15% in 2009. (AB2570, UI Code Section 10214.5) Accordingly, Section 4409(a) will be amended to provide that the Panel may allocate up to 15% of the annually available training funds for SET.

Under existing Section 4409(a), SET projects may be funded to improve the skills of frontline workers who earn at least the statewide average hourly wage. The statewide average hourly wage is currently \$23.64. There are exceptions to this minimum for trainees with "multiple barriers" to employment and for trainees in a High Unemployment Area. The proposed Section 4409(a)(6) creates a third exception for trainees in an industry sector identified by the Panel as a funding priority in accordance with Unemployment Insurance Code Section 10200(b), or for training under a Critical Proposal within the meaning of 22 CCR Section 4402.2. The wage modification permitted by proposed Section 4409(a)(6) would be made on a case-by-case basis, up to 25% below the state average hourly wage.

Under existing Section 4409(b), the Panel may fund a SET project in a High Unemployment Area. In so doing, the Panel may waive the minimum wage requirement and/or modify the standard retention period. Existing Section 4409(b) refers to 22 CCR 4429. The proposed amendment clarifies that the procedure for a SET wage modification in a High Unemployment Area shall be in accordance with Section 4429.

4. Amend Section 4420, Literacy Training

Under existing Section 4420, funding for basic skills and literacy training requires a written evaluation of individual trainee literacy needs. The proposed amendments to Section 4420 eliminate this impediment, and cost, to the funding of literacy training.

Existing Section 4420 also limits the funding of basic and literacy skills training hours to 45% of the total vocational training hours per trainee. The proposed amendments to

Section 4420 changes and simplifies this limitation to 45% of the total training hours per trainee.

5. Amend Section 4420.5, Safety Training

Existing Section 4420.5 differentiates between general safety training, which is not funded at all, special safety training, which may be funded at not more than 10% of job related vocational training hours, and intensive safety training, such as may be found in some environmental clean-up procedures, which is not subject to a percentage cap.

The proposed amendments to Section 4420.5 delete an out-dated reference to 8 CCR Subchapter 7; clarify the distinction between general safety training and special safety training; and limit special safety training to 10% of total training hours. The proposed amendments also clarify that intensive safety training is not subject to the percentage restrictions of special safety training.

6. Amend Section 4426, Training Agency Projects

Existing Section 4426 does not distinguish between public and private schools, colleges and training academies, refers to and requires that certain training agencies be certified by the now defunct Council for Private Postsecondary and Vocational Education (Council), and provides for various requirements that must be met before a training academy can administer a contract, apart from training delivery.

The proposed amendments to Section 4426 distinguish between public and private schools, colleges and training academies; deletes reference to the Council; and provides that a training agency may function as either the contract administrator, training provider, or as both.

In addition, the proposed amendments provide that public entities must be certified by the California Department of Education or an appropriate third party certifying organization. Private training schools must be approved by an independent third party certifying organization that is satisfactory to the Panel, on a case-by-case basis.

The necessity for all actions proposed above are set forth in the Initial Statement of Reasons.

FISCAL DISCLOSURES

The Panel has made the following initial determinations regarding fiscal disclosures as required by Government Code Section 11346.2.

A. Fiscal Impact. The proposed actions do not impose costs or savings requiring reimbursement under Section 17500 *et seq.* of the Government Code. Also, these actions do not impose non-discretionary costs or savings to any local agency; nor do they impact federal funding for the State. The proposed actions do not impose costs, nor do they affect any cost of savings on any other state agency. They would result in preserving ETP funds for a more equitable distribution among a more diverse group of employers.

B. Cost Impacts. The Panel is aware of a minor cost impact that will, if anything, benefit businesses applying for ETP funds. This is the proposed amendment at Section 4426, which will allow private, post-secondary vocational schools to obtain certification other than through the now-defunct Bureau of Private Postsecondary and Vocational Education (BPPVE). Specifically, the Panel will accept an alternative certification through a process developed in collaboration with the South Bay Workforce Investment Board, estimated to be less costly than BPPVE.

C. Adverse Impact on Business. The proposed actions do not have any significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These actions would have a positive effect since they would better implement the statutory goal of achieving a “broad and equitable distribution of funds” pursuant to Unemployment Insurance Code Section 10209(d). The overall purpose of the Panel’s program is to enhance the ability of California businesses to meet the challenge of competition from other states.

D. Effect on Small Business. The proposed actions will not affect small businesses unless they seek training funds. Since this action would clarify, update and simplify the Panel’s standards for reviewing and funding training proposals, this would be a positive effect, as stated above.

E. Effect on Jobs and Business Expansion. The proposed actions would not create or eliminate jobs in California. Nor would they create new businesses or eliminate existing businesses in California. These actions would not directly affect the expansion of businesses currently operating in California.

The overall intent and purpose of the ETP program is to foster job creation and the retention of high-wage, high-skilled jobs that are threatened by out-of-state competition. (U.I. Code Section 10200(a).) The Panel must give funding priority to projects that would train new employees of firms locating or expanding in the state; train displaced workers, and develop workers with skills that prepare

them for the challenges of a high performance workplace. (U.I. Code Section 10200(b).) Thus, the panel has made an initial determination that the proposed action may encourage the retention of jobs and businesses in California, in the sense that it would enhance the Panel's ability to implement the purpose of the ETP program.

F. Imposed Mandate. The proposed actions do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES

The Panel must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons, than the proposed action. The Panel has made an initial determination that there is no reasonable alternative to the regulatory proposed action that would be more effective in carrying out its purpose, or would be as effective and less burdensome to affected private parties. Interested persons are welcome to identify reasonable alternatives during the written comment period.

WRITTEN COMMENT PERIOD

A 45-day written comment period has been established beginning on October 9, 2009 and ending at 5:00 p.m. on November 23, 2009. Any interested person, or his or her authorized representative, may present written comments on the proposed actions within that time period. Comments should be sent to:

William Stuart, Staff Counsel
Employment Training Panel, Legal Unit
1100 "J" Street, Fourth Floor
Sacramento, California 95814
Telephone: (916) 327-5578
E-Mail: wstuart@etp.ca.gov
FAX: (916) 327-5268

PUBLIC HEARING

A public hearing will not be held unless one is requested by an interested person, or his or her authorized representative. The request must be submitted in writing to Mr. Stuart at the address shown above no later than 5:00 p.m. on the fifteenth day before the written comment period ends. The request should identify the specific regulatory action for which the hearing is requested.

Modifications to the text of the proposed regulatory actions may be made after the public comment period. If so, they will be posted on the ETP Website at

www.etp.ca.gov. They will also be available upon request to Mr. Stuart. Any modifications will be open to public comment for at least 15 days before being adopted, as noticed on the ETP Website.

ETP will make the modifications available to all persons who submit written comments or testify, or who request notification.

AVAILABILITY OF DOCUMENTS

The Panel has prepared an Initial Statement of Reasons for the proposed actions, and has compiled all information on which the actions were based. This statement, along with the express text of the proposed actions and the written information on which they were based, are available for inspection at the written comment address shown above. Any inquiries should be directed to Mr. Stuart.

The Panel will prepare a Final Statement of Reasons at the conclusion of the public comment period. This final statement and the information on which it is based will also be available for inspection at the addresses shown above. Again, any inquiries should be directed to Mr. Stuart.

This Notice of Proposed Rulemaking is posted on the ETP Website at www.etp.ca.gov. The Initial Statement of Reasons and the express text of the proposed actions are also posted on the ETP Website.

CONTACT PERSONS

Requests for copies of the express text of the proposed actions and the modified text (if any), and the Initial Statement of Reasons, should be directed to Mr. Stuart at the written comment address shown above. In addition, the “rulemaking file” of information on which the proposed actions are based is also available for inspection upon request made to Mr. Stuart.

In the event Mr. Stuart is unavailable, inquiries regarding the proposed regulatory actions should be directed to General Counsel Maureen Reilly at the same address or by phone at (916) 327-5422 or email at mreilly@etp.ca.gov.