

MAY 10 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Stephen Smith
Director
California Department of Industrial Relations
10th Floor
455 Golden Gate Avenue
San Francisco, California 94102

Re: Initiation of Derecognition Proceedings

Dear Mr. Smith:

This is to notify you, as well as the State sponsors, that the Office of Apprenticeship Training, Employer and Labor Services (OATELS) is hereby instituting derecognition proceedings against the State Apprenticeship Agency for the State of California (the California Department of Industrial Relations or CDIR), under 29 C.F.R. §29.13. Under the National Apprenticeship Act (NAA), OATELS oversees the national registered apprenticeship system in order to protect the welfare of apprentices and to promote apprenticeship opportunities.

OATELS has determined that reasonable cause exists to believe that the CDIR has failed to fulfill or operate in conformity with the requirements of 29 C.F.R. Part 29. In particular, the California Labor Code (CLC) §3075(b) provides for CDIR approval of new apprenticeship programs in the building and construction trades only where apprentice-training needs so justify for the craft or trade and geographic area specified in an application for program registration.

Under CLC §3075(b), the requisite need can be demonstrated only where either (1) there is no existing program approved for the craft or trade and geographic area in question; (2) there is an approved program but that program does not have the capacity or neglects or refuses to supply employers at a public works site with apprentices; or (3) there is an approved program but it has been identified by the State as deficient in meeting its obligations. In addition, CLC §3075(c) provides that the CDIR can approve a new apprenticeship program where special circumstances, as established by regulation, so justify.

In response to OATELS' repeated expressions of concern that CLC §3075(b) unacceptably limits apprenticeship opportunities, the CDIR has maintained that the "need requirement" is necessary to protect apprentices from transient or exploitative programs. While OATELS shares CDIR's concern that only genuine programs achieve registration, we maintain that the State can achieve that goal through measures that do not have CLC §3075(b)'s detrimental impact on apprenticeship opportunities.



A Proud Member of America's Workforce Network

OAFELS remains ready to work with you to resolve this situation. We have enclosed sample text for the necessary legislative and regulatory remedies to facilitate corrective action. Please contact me if I can be of further assistance.

Sincerely,



ANTHONY SWOOGUE
Administrator
Office of Apprenticeship Training, Employer and Labor Services

Enclosure

cc: California apprenticeship program sponsors
Gray Davis, Governor
John Burton, President Pro Tem of the State Senate
Richard Polanco, Majority Leader of the State Senate
James L. Brulte, Senate Republican Leader
Herb Wesson, Speaker of the Assembly
Fred Keeley, Speaker Pro Tempore
Kevin Shelley, Majority Leader of the Assembly
Dave Cox, Assembly Republican Leader

Legislative Remedy

Section 3075 of the California Labor Code is hereby amended as follows:

1. Existing Paragraph (b) is repealed in its entirety; and
2. Existing Paragraph (c) is repealed in its entirety.

Interim Regulatory Remedy

Add a new section to read:

212.05 Apprenticeship Training Needs.

The U.S. Department of Labor finding that CLC §3075(b) does not conform to the requirements of 29 C.F.R. Part 29 constitutes a "special circumstance," as provided under CLC §3075(c), which supersedes CLC §3075(b) for the purpose of registering new apprenticeship programs in the building and construction trades. Therefore, CLC §3075(b) is administratively superseded pending repeal of CLC §3075(b).

NOTE: Authority cited: Section §3075(c), Labor Code.

Opinion from the California Attorney General's Office

The California Attorney General hereby finds that the promulgation of Regulation 212.05, California Code of Regulations, Title 8, Chapter 2, as an interim regulatory remedy pending legislative repeal of CLC §3075(b), is valid under California law.