

Understanding the Skilled and Trained Workforce Requirements Webinar

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What is a... Skilled & Trained Workforce?

- What projects require a skilled and trained workforce?
- What are the reporting requirements?
- Who must report?
- What are the new enforcement procedures including penalties and debarment?



Skilled & Trained

“Skilled”

100%

must be “Skilled”

Trained

30%

Contractors must have at least 30% of journeypersons be graduates of apprenticeship program for following trades:

Acoustical installer
Bricklayer
Carpenter
Cement mason
Drywall installer or lather
Marble mason, setter, or finisher
Modular furniture or system installer
Operating engineer

Pile driver
Plasterer
Roofer
Waterproofers
Stone mason
Surveyor
Terrazzo worker or finisher
Teamster
Tile layer, setter or finisher

50%

Annual graduation rate requirement as of January 1, 2019, for all other apprenticeable trades (*except teamsters*)

Increases to 60%
on January 1, 2020

Background

1. SB 54
2. AB 566
3. SB 693
4. SB 418
5. AB 3018

Enforcement Update

Refineries



Skilled and trained workforce requirements apply to various public works projects, including but not limited to:

- Lease-leaseback (*Education Code § 17407.5*) and design-build delivery methods (*Education Code section § 17250.25*) for schools*
- Design-build method for the Department of Corrections and Department of General Services (*Public Contract Code § 10191*)*
- Design-build method for various local agencies (i.e., cities, counties, special districts operating wastewater facilities, transit districts, etc.) (*Public Contract Code § 22164*)*
- Best value contracting for seven counties: Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano and Yuba (*Public Contract Code § 20155.4*)*

Skilled and trained workforce requirements apply to various public works projects, including but not limited to (continued):

- Best value contracting for LAUSD (*Public Contract Code §§ 20119.1 and 20119.3*)*
- Best value contracting for University of California (*Public Contract Code §§ 10506.6, 10506.8 and 10506.9*)**
- Construction manager at-risk method for counties (*Public Contract Code § 20146*)**
- Lease-leaseback method for county boards of education (*Education Code § 1048*)*
- Housing sustainability projects (*Government Code § 66201*)
- Affordable housing utilizing streamlined approval process (*Government Code § 65913.4*)

Skilled and trained workforce requirements apply to various public works projects, including but not limited to (continued):

A public entity may require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project regardless of whether the public entity is required to do so by a statute or regulation.

(Section 2600(b))

Skilled and trained workforce statutory requirements shall NOT apply to these projects if any of the following are TRUE:

1. The public entity or other awarding body has entered into a project labor agreement (PLA) that will bind all contractors and subcontractors performing work to use a skilled and trained workforce and the entity agrees to be bound by that PLA; or
2. The project or contract is being performed under the extension or renewal of a PLA that was entered into prior to January 1, 2017* (**or prior to January 1, 2018); or
3. The entity has entered into a PLA that will bind the entity and all its subcontractors at every tier to use a skilled and trained workforce.

Apprenticeship Graduation Requirements

(6) A subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if both of the following requirements are met:

- A. The subcontractor was not a listed subcontractor under Section 4104 or a substitute for a listed subcontractor.
- B. The subcontract does not exceed one-half of one (1) percent of the price of the prime contract.



What is Skilled?

All the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief.

(PCC § 2601(d)(1))



What is a Skilled Journeyperson?

"Skilled journeyperson" means a worker who either:

1. Graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.
2. Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

(PCC § 2601(e))

What is Trained?

Contractors must have at least **30%** of journeypersons be graduates of an apprenticeship program for the following trades:

- Acoustical Installer
- Bricklayer
- Carpenter
- Cement Mason
- Drywall Installer and Lather
- Marble Mason, Setter, Finisher
- Modular Furniture or Systems Installer
- Operating Engineer
- Pile Driver
- Plasterer
- Roofer
- Waterproofer
- Stone Mason
- Surveyor
- Teamster
- Terrazzo Worker or Finisher
- Tile Layer, Setter, Finisher

For all other apprenticeable *trades*—annual graduation rate requirements increase per the schedule below:


50% by January 1, 2019

60% by January 1, 2020

GRADUATE PERCENTAGES

Skilled and Trained Workforce

Apprenticeship and Enforcement

- Apprenticeship—Volume of New Apprentices increasing during COVID-19 to highest in state history (96,726 compared to 53,000+ in October 2017)
- Average apprenticeship age is 32  up 4 years due to skilled and trained

Reporting

Confirming existence of an enforceable commitment that a skilled and trained workforce will be used.

- Contractor provide on a monthly basis while project is being performed a report demonstrating compliance.

(PCC § 2602(a)(2))



Reporting *(continued)*

If a report is not submitted or is incomplete, A/B shall:

1. Withhold further payment until complete.
2. If subcontractor, withhold 150% of monthly billing.
 - a. Withhold; or
 - b. Substitution

(PCC § 2602(b))

Reporting *(continued)*

If monthly report not demonstrate compliance, A/B shall:

1. Withhold further payment (150%) until plan provided to achieve substantial compliance.
2. Allow substitution.
3. Forward a copy of monthly report to Labor Commissioner for issuance of CWPA .
4. Forward a copy of plan to Labor Commissioner and A/B response to plan.

(PCC § 2602 (c)(1)-(3))

***Monthly Report is a Public Record**

New Penalties Including Debarment

- Up to \$5,000 per month of work performed in violation of this chapter.
- For a second or subsequent violation within a three-year period: \$10,000 per month of work performed.

(PCC § 2603(a))



Factors Considered by Labor Commissioner

- Whether the violation was intentional.
- Whether the contractor has committed other violations of this chapter of the Labor Code.
- Whether upon notice of the violation, the contractor took steps to voluntarily remedy the violation.
- The extent or severity of the violation.
- If the contractor submitted and followed a plan to achieve substantial compliance.



(PCC § 2603(b))

Reporting

EXHIBIT “__”

MONTHLY REPORT

Skilled and Trained Workforce

(Public Contract Code section 2600, *et seq.*)

Month: _____, 2017

In accordance with Public Contract Code section 2600 *et seq.*, all the workers of _____ [INSERT NAME OF CONTRACTOR/SUBCONTRACTOR] performing work in an apprenticeable occupation in the building and construction trades on the project known as _____ [INSERT PROJECT NAME AND LOCATION] (the "Project") are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the California Department of Industrial Relations (the "Chief"). "Skilled journeyperson" means a worker who either:

- (1) Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the Federal Secretary of Labor.
- (2) Has at least as many hours of on-the-job-experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief.

In addition, at least _____ percent of the skilled journeypersons employed by _____ [INSERT NAME OF CONTRACTOR/SUBCONTRACTOR] to perform work on the Project are graduates of an apprenticeship program for the applicable occupation.¹ A graduate of an apprenticeship program means either of the following:

- (1) An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the Chief pursuant to Section 3075 of the Labor Code, or
- (2) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

Date: _____

Contractor/Subcontractor: _____

Signature: _____

Title: _____

¹ Skilled journeypersons employed to perform work on the Project by Contractor or its subcontractors at every tier must be graduates of an apprenticeship program for the applicable occupation at the following percentages per Section 2601: at least 50 percent for work performed on or after January 1, 2019; at least 60 percent for work performed on or after January 1, 2020. The increases for 2018, 2019, and 2020 shall not apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or water proofer, stone mason, surveyor teamster, terrazzo worker or finisher and tile layer, setter, or finisher.

Reporting

Exhibit A

REQUIREMENT OF SKILLED JOURNEYPEPERSONS OR APPRENTICES

Name of Employee	Journey person Who Graduated from Apprentice Program? (Yes/No)	Journey person with Sufficient On-The- Job Experience (Yes/No)	Apprentice Registered in an Approved Program (Yes/No)
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Reporting

Exhibit B

HEADCOUNT OF APPRENTICESHIP GRADUATES

Name of Skilled Journeyman	Last 4 Digits of Social Security	Graduate of Apprenticeship Program? (Yes/No)	Name of Apprenticeship Program or Meets § 2601, Subdivision (d)(3) Exception	Graduation Documentation on File? (Yes/No)
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Reporting

Exhibit C

HOURS WORKED OF APPRENTICESHIP GRADUATES

Name of Skilled Journeyman	Last 4 Digits of Social Security	Graduate of Apprenticeship Program? (Yes/No)	Name of Apprenticeship Program or Meets § 2601, Subdivision (d)(3) Exception	Graduation Documentation on File? (Yes/No)	Total Hours Worked
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Documents to Prove On-the-Job Experience

- Worker Affidavit
- Employer Affidavit
- W-2s or Other Back-up



Documents to Prove Graduation

- Diploma or certificate from the Apprenticeship Program
- DOL Certificate (for out-of-state program)
- Affidavit or declaration from the graduate or from a Program representative
- DIR Apprenticeship Status Website
www.dir.ca.gov/das/appcertpw/AppCertSearch.asp

****A Journeyman card is not sufficient!***

Hearing Procedure

- Same as prevailing wage claims under Labor Code § 1742 and regulations



Always Consider Safe Harbor

If a subcontractor is found to have violated this chapter, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of the subcontractor's failure to comply with this chapter or unless the prime contractor fails to comply with any of the following requirements:

1. For contracts entered into on or after January 1, 2019, the contract executed between the contractor and the subcontractor for the performance of work on the project shall include a copy of this chapter.
2. The contractor shall periodically monitor the subcontractor's use of a skilled and trained workforce.
3. Upon becoming aware of a failure of the subcontractor to use a skilled and trained workforce, the contractor shall take corrective action, including, but not limited to, retaining 150 percent of the amount due to the subcontractor for work performed on the project until the failure is corrected.

Safe Harbor

4. Prior to making the final payment to the subcontractor for work performed on the project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has met the requirements of this chapter.

(PCC § 2603(f))

5. The Labor Commissioner shall notify the prime contractor within 15 days of the receipt by the Labor Commissioner of a complaint that a subcontractor violated this chapter.

(PCC § 2603(g))

Debarment

Whenever a contractor or subcontractor is found by the Labor Commissioner to be in violation of this chapter **with intent to defraud**, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

1. Bid on or be awarded a contract for a public works project.
2. Perform work as a subcontractor on a public works project.

(PCC § 2603(h))

OR...

Debarment

Whenever a contractor or subcontractor is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of up to three years to do either of the following:

1. Bid on or be awarded a contract for a public works project.
2. Perform work as a subcontractor on a public works project.

(PCC § 2603(h))

Thank You

For questions or comments, please contact:

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