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Via e-mail to DLSERegulations@dir.ca.gov

Jennifer Stevens, Legislative Analyst and Regulations Coordinator
Department of Industrial Relations
Division of Labor Standards Enforcement, Legal Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825

RE: Notice of Proposed Rulemaking: Sexual Violence and Harassment Prevention Training for Property Service Workers, Cal. Code Regs. Tit. 8, [new] sections 13820-13822

Dear Ms. Stevens:

On behalf of Equal Rights Advocates (“ERA”) and Futures without Violence (“FUTURES”), we write in response to the Department of Industrial Relations’ Notice of Proposed Rulemaking (“NPRM”) regarding the Sexual Violence and Harassment Prevention Training for Property Service Workers required under Labor Code Section 1429.5, enacted by Assembly Bill 1978 (2016) (“AB 1978”). ERA and FUTURES support the adoption of the proposed regulations and submit the following comments and recommendations with respect to the language of proposed Sections 13820 through 13822.

ERA is a national non-profit legal organization whose mission is to protect and expand economic and educational access and opportunities for women and girls. For 45 years, ERA has been a leader in the field of gender justice, using litigation, policy reform, public education, and collaborative advocacy strategies to combat discrimination and marginalization at work and in schools. Along with SEIU United Service Workers West (SEIU-USWW), ERA was an organizational sponsor of AB 1978 and helped to convene the Ya Basta! Coalition that came together to support its passage and implementation.

FUTURES is a national non-profit organization based in San Francisco, CA, that for over 30 years has been providing groundbreaking campaigns, programs, and policies that empower individuals and organizations working to end violence against women and children, and improve individual and system responses to violence and abuse. FUTURES leads the only national resource center dedicated to addressing sexual harassment and violence, and other forms of gender-based violence, impacting workers and workplaces. Through this resource center, FUTURES works in collaboration with anti-violence advocates, unions, service providers, employers, and others to address the vulnerability of low-wage workers to experiencing violence and harassment, and improve workplace responses to such violence to create safer, more supportive workplaces for all.

ERA has a long history of representing women workers in the janitorial industry who have been sexually harassed, assaulted or otherwise subjected to violence in the workplace. Our past clients include Maria Bojorquez, one of the women featured in the *Rape on the Night Shift* documentary first broadcast in

2015,¹ which exposed the widespread and endemic nature of sexual violence in the industry. That documentary also served as a catalyst for partnerships among workers' rights organizations and anti-sexual assault advocates. In 2016, ERA, FUTURES, and other members of the Ya Basta! Coalition² came together to support the campaign led by immigrant women workers that successfully advocated for the passage of AB 1978. Since then, ERA and FUTURES have worked with our coalition partners to provide training and other support to the janitorial worker *promotoras* who continue to lead this campaign and to advocate for recognition (and expansion) of their role in preventing sexual harassment and shifting workplace culture across their industry to focus on prevention, response, and greater safety.

ERA's experience representing women janitors as clients confirms what a 2016 UC Berkeley Labor Center study of the property services industry in California found: Far too many janitorial workers, most of whom are people of color and/or immigrants, face unfair and dangerous working conditions that make them extremely vulnerable to sexual harassment, sexual violence, and wage theft.³ In other words, sexual harassment and violence are both symptoms and causes of economic insecurity in an industry where many workers are employed by invisible employers. The two-part structure of AB 1978 and the content of its training provisions reflect a recognition that the problems of wage theft and sexual harassment/violence in the janitorial industry are interconnected.

ERA and other members of the Ya Basta! Coalition agree with the Department that the janitorial services industry "is structured in a way that isolates workers who are uniquely vulnerable to sexual harassment, and then creates conditions in which workers are afraid to step forward to report harassment."⁴ We believe that the structural characteristics of the janitorial industry, coupled with the vulnerability of its largely female, overwhelmingly immigrant, low-paid workforce call for an industry-specific and worker-centered approach to sexual harassment prevention and response. AB 1978 intentionally reflects this approach; at the time of its enactment, it was the first state law to mandate sexual harassment *and violence prevention* training for a specific industry, and to require that employers provide *in-person* training not only to supervisors and managers, but also to non-supervisory employees, including front line cleaners.

ERA and FUTURES support the proposed regulations on the Sexual Harassment and Violence Prevention Training ("Training Regulations"). We suggest a few specific changes and additions to proposed sections 13820-13822 below in order to clarify these provisions and ensure that they fully implement AB 1978.

¹ See <https://www.pbs.org/wgbh/frontline/film/rape-on-the-night-shift/#video-2> for the original episode, aired in June 2015 (featuring Ms. Bojorquez), and <https://www.pbs.org/wgbh/frontline/film/rape-on-the-night-shift/#video-1> for the episode that aired in January 2018 (discussing the Ya Basta! campaign and efforts to pass AB 1978).

² In addition to ERA and FUTURES, members of the Ya Basta Coalition include: SEIU United Services Workers West (SEIU-USWW), Maintenance Cooperation Trust Fund (MCTF), California Coalition Against Sexual Assault (Cal-CASA), UC Berkeley Labor and Occupational Health Program (LOHP), WorkSafe, and the East Los Angeles Women's Center.

³ S. Hinkley, et al. (March 2016), *Race to the Bottom: How Low-Road Subcontracting Affects Working Conditions in California's Property Services Industry*, report of the UC Berkeley Labor Center, available at <http://laborcenter.berkeley.edu/Race-to-the-Bottom>.

⁴ Notice of Proposed Rulemaking Re: Sexual Violence and Harassment Prevention Training for Property Service Workers, (proposed April 5, 2019) (to be codified at 8 Cal. Code Regs. §§ 13820-13822) ("NPRM"), at 3 (citing Helen Chen, Alejandra Domenzain, and Karen Andrews (May 2016), *The Perfect Storm: How Supervisors Get Away with Sexually Harassing Workers Who Work Alone at Night*, report of the Labor and Occupational Health Program, UC Berkeley, available at <http://lohp.org/the-perfect-storm/>).

1. The Regulations Should Make Clear That the Required Training Must Be Conducted *In Person*.

The proposed regulations define “Training” as “in-person, interactive instruction provided to a janitorial employee or supervisor,” and provide guidance about and examples of *interactive* instruction. (Proposed section 13820(c).) This language mirrors parts of existing regulations that implement the sexual harassment training requirement under the Fair Employment and Housing Act (“FEHA”), codified at Government Code section 12950.1.⁵ However, Labor Code section 1429.5 specifically requires “*in-person* sexual violence and harassment prevention training” to be provided to workers and employers⁶ covered by the law. This term is not superfluous and we believe the regulations should specifically define “in-person” to avoid confusion and encourage employers to adopt best training practices.

By borrowing heavily from the language of Government Code section 12950.1 regulations that authorize “e-learning,” “webinar[s],” and other forms of training *not* involving in-person instruction,⁷ but *not* providing any specific guidance on what “in-person” means, the proposed regulations heighten the risk of confusion and misinterpretation by employers. To clarify that the sexual harassment and prevention training program required under AB 1978 must be delivered in person, we would propose the following language be added or incorporated into the Definitions section of the Training regulations:

“In-person” training means that a trainer is physically present with the employees being trained to deliver information, lead discussions, and respond to questions.

Based on our experience developing, facilitating and conducting trainings, and designing curricula specifically related to sexual violence, sexual harassment, and health and safety for adult low-wage workers, we believe that a trainer must be physically present in order to adequately connect with participants, provide support and resources to participants engaging with the content, and facilitate peer learning opportunities. Core adult learning principles require engagement and the opportunity to challenge and question, allowing learners to incorporate new ideas and skills. In-person, interactive training improves retention of information and deepens learning. Moreover, in-person training has been required in parallel California training standards, including Cal/OSHA standards addressing violence prevention in healthcare settings, blood borne pathogens, and aerosol transmissible diseases.⁸

⁵ Compare proposed section 13820(c) to 2 Cal. Code Regs. section 11024(a)(1)(2)(E) (which states that interactive instruction “shall include questions that assess learning, skill-building activities that assess the [employee’s] application and understanding of content learned, and numerous hypothetical scenarios about harassment, each with one or more discussion questions... Examples include pre- or post-training quizzes or tests, small group discussion questions, discussion questions that accompany hypothetical fact scenarios, use of brief scenarios discussed in small groups or by the entire group, or any other learning activity geared towards ensuring interactive participation as well as the ability to apply what is learned to the [employee’s] work environment.”)

⁶ ERA and FUTURES believe that it would be consistent with the intent of the Legislature, as well as the purpose and remaining language of AB 1978, to include within the coverage of the law all employers that employ or otherwise engage for the provision of janitorial services (e.g. by contract, subcontract, or franchise agreement) at least one “covered worker,” as that term is defined in Labor Code section 1420(a)(1)-(2).

⁷ See 2 CCR § 11024(a)(2)(B)-(D).

⁸ Workplace Violence Prevention in Health Care, 8 CCR §3342 (e) (“The employer shall have an effective procedure for obtaining active involvement of employees and their representatives in developing training curricula and training materials, participating in training sessions and reviewing and revising the training program;”); Blood borne Pathogen Standard, 8 CCR §1910.1030 (g)(2)(G)(14) (requiring the training program to contain “[i]nteractive questions and answers with the person conducting the training session.”)

2. The Regulations Should Provide More Specific Guidance on the Methods and Content of Required Training to Ensure That It is Relevant, Inclusive, and Effective.

As members of the advisory committee convened by the Department in 2017 to “recommend requirements for a sexual harassment prevention training program” per Labor Code section 1429.5, ERA and FUTURES – along with other members of the Ya Basta! Coalition – have previously communicated our belief that the required training should go *beyond* the conventional, compliance-focused sexual harassment training for supervisory employees that has been widely in use since 2005, when Government Code section 12950.1 went into effect.⁹ Because AB 1978 aims to *prevent* sexual violence and harassment in an industry that employs a disproportionate number of highly vulnerable workers who have experienced these problems at alarming rates, it is essential that the regulations specifically call for the required training to include survivor-centered content and trauma-informed principles.¹⁰

The content of the janitorial sexual violence and assault training should include a trauma-informed approach that “realizes impact of trauma, recognizes the signs and symptoms of trauma [...] integrat[es] knowledge about trauma into policies, procedures, and practices; and actively resists re-traumatization.”¹¹ The importance and effectiveness of trauma-informed, survivor-centered approaches to training are well documented. The Centers for Disease Control and Prevention, Office of Public Health Preparedness and Response (OPHPR) and the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) have published resources and guidance regarding the importance of a trauma-informed approach to working with and educating people about sexual harassment and violence (“SH/V”). That guidance emphasizes several principles of a trauma-informed approach, including: 1) trustworthiness and transparency; 3) peer support; 4) collaboration and mutuality; 5) empowerment, voice and choice; and 6) cultural, historical and gender issues/context.¹²

Putting these principles into practices means making sure that the required training includes the following messages and/or methods:

- Prioritizing the emotional and physical safety of victims;
- Avoiding blame and shame of victims of SH/V, or judgment for the actions they take, or do not take, in response;

⁹ A.B. 1825 (2004), codified at Cal. Gov. Code 12950.1 and 2 CCR § 11024 (originally requiring employers with 50+ employees to provide 2 hours of sexual harassment prevention training to supervisory employees).

¹⁰ See, e.g., Monique Tello, MD, MPH, “Trauma-informed care: What it is, and why it’s important,” Harvard Health Blog, Harvard Health Publishing, Harvard Medical School (Oct. 16, 2018), available at <https://www.health.harvard.edu/blog/trauma-informed-care-what-it-is-and-why-its-important-2018101613562>.

¹¹ California Coalition Against Sexual Assault (CalCASA), “Trauma-Informed Approach to Promote Healthy and Respectful Work Environments” available at https://shpr.legislature.ca.gov/sites/shpr.legislature.ca.gov/files/CALCASA%20CA%20Leg%20Recs_Harassment_May2018.pdf (urging the California Legislature to adopt the trauma-informed framework and philosophy in advancing healthy and respectful work environments).

¹² See, e.g., “SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach” (July 2014) available at <http://www.traumainformedcareproject.org/resources/SAMHSA%20TIC.pdf>; see also Centers for Disease Control and Prevention Infographic: 6 Guiding Principles to a Trauma-Informed Approach available at https://www.cdc.gov/cpr/infographics/6_principles_trauma_info.htm.

- Fully informing workers and victims of SH/V about possible courses of action, including risks and limitations, and encouraging them to decide for themselves which course of action they are ready and willing to take, if any, when they are ready to do so;
- Providing all workers, including bystanders (not just victims), with a wide range of options and resources for responding to SH/V, including the names of organizations and *government agencies* that can provide support or assist in processing reports of sexual violence and/or harassment.

We suggest adding language to Section 13822, subsection (a) specifying that the required training shall include the trauma-informed principles and survivor-centered content noted above.

In addition, we suggest modifying subdivision (b) of Section 13822 as follows:

*(b) In addition, all training shall include identification of local, state, and national resources for victims of ~~unlawful~~ sexual violence and harassment, including **hotlines and helplines for survivors**, community-based resources such as rape crisis centers, counseling services and mental health supports, **and agencies or organizations** to whom they ~~should~~ **may** report ~~any alleged~~ sexual violence and harassment.*

The Regulations Should Specify that the Training Developed by the U.C. Berkeley Labor Occupational Health Program (LOHP) Complies with Labor Code Section 1429.5 and Will be Made Available by DIR.

At the direction of the Department and in collaboration with ERA, FUTURES, and other members of the Ya Basta! Coalition, including janitorial worker *promotoras* (peer educators), LOHP created a model training that fully satisfies the requirements of Labor Code Section 1429.5 in a way that is industry-specific, culturally-relevant, worker-centered (based on problems and solutions identified by workers themselves), prevention-focused, trauma-informed, and available in English and Spanish. The janitorial workers most vulnerable to experiencing sexual harassment and assault on the job know best the conditions and circumstances that create their vulnerability, as well as what improvements, practices, and education is necessary to address that vulnerability. This model training was actively informed by these workers, with scenarios that provide real life circumstances and solutions. The Training Regulations should specify that the LOHP training, therefore, satisfies the training requirements under Labor Code Section 1429.5 and should indicate that the Department will make the LOHP model training available for use by employers and other groups tasked with providing training to workers and supervisors.

California is in a unique position to implement the nation's first sexual violence prevention standard for janitorial workers. ERA and FUTURES support and urge DIR to adopt regulations that require employers in the janitorial industry to provide interactive, worker-centered and developed, trauma-informed training that is shown to be most effective in preventing workplace sexual harassment and violence.

For these reasons, we recommend that the Department adopt the Sexual Harassment and Violence Prevention Training regulations with the above-recommended changes, including requiring a specific definition of "in-person," providing guidance on trauma-informed content to be included in the training, specifying that the LOHP training serves as the model and satisfies the training requirements under

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Labor Code Section 1429.5, and making the LOHP training available to those tasked with providing training to workers and supervisors.

Respectfully submitted,



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