REGULATIONS

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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
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TITLE 22. SOCIAL SECURITY
DIVISION 1. EMPLOYMENT DEVELOPMENT DEPARTMENT
SUBDIVISION 1. DIRECTOR OF EMPLOYMENT DEVELOPMENT
DIVISION 3. EMPLOYMENT SERVICES PROGRAMS
PART 1. EMPLOYMENT AND EMPLOYABILITY SERVICES
CHAPTER 1.5. EMPLOYMENT TRAINING PANEL

ETP Updated: 03/17/11

The Employment Training Panel's first official regulatory filing was approved by the Office of Administrative Law on April 12, 1991. The development and revision of regulations remains an ongoing priority for the Panel.

These regulations implement and make specific the Panel's enabling legislation at Unemployment Insurance Code Sections 10200-10217. The pertinent section of legislation is identified under each regulation as a reference. All of the Panel's regulatory actions are under the authority of Unemployment Insurance Code Section 10205(m).

A Table of Contents is provided for reference to the regulations by section number and subject matter and may be retrieved by hyperlink.

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§ 4400. Definitions

As used in sections 4400-4499, inclusive, of these regulations:

(a) "Apprentice" means an individual at least 16 years of age who is in training under apprenticeship standards and a written apprenticeship agreement pursuant to chapter 4 (commencing with section 3070) of division 3 of the Labor Code.

(b) "Alternative Funding Source" means funding appropriated to the Panel for the purposes of the ETP Core Program, or other workforce training program, from a source other than the Employment Training Tax.

(c) "Core Program" means the workforce development program established at Section 10200 *et seq.* of the Unemployment Insurance Code and funded by the Employment Training Tax.

(d) "Days" means calendar days unless otherwise specified. A workweek may be less than five days, but must be more than two days.

(e) "[Repealed]"

(f) "Disabled individual" means any person who meets one of the following criteria:

(1) has a physical or mental impairment that substantially limits one or more of such person's major life activities;

(2) has a record of such impairment; or,

(3) is regarded as having such an impairment, and is likely to experience difficulty in securing, retaining, or advancing in employment because of such an impairment, and who can perform job with reasonable accommodation to his or her disability. Eligible contractors shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled individual unless the applicant can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(g) "Displaced worker" means a person who has been subjected to an involuntary layoff or separation from his or her employment, or has been separated from employment due to the established seniority practice of a collective bargaining agent, and who has not quit voluntarily or been dismissed for disciplinary reasons, or has received a written notice of layoff from their current employer.

(h) "Employment" means any full-time work, occupation, or trade, in which one is or may be engaged for wages, salary, or other forms of remuneration that are customary for the occupation and the industry. Full-time employment means employment of at least 35 hours a week, for a period of 90 consecutive days, which period includes normal days not worked by the employee, such as a weekend and holidays, with a single employer, except for those occupations in which it is not customary for a worker to be employed 90 consecutive days with a single employer. In these latter cases, the probationary period panel may substitute a period similar to the probationary period customary to the occupation. The probationary period shall not be less than 500 work hours and shall be completed within a period of 150 days following the completion of training. The panel shall, upon the showing of good cause by the contractor, extend the probationary period up to 272 days following the completion of training. Upon application and proof from the contractor, the panel may find that a less than 35-hour work week constitutes full-time employment if any or all of the following conditions exist:

(1) The less than 35-hour work week constitutes an entry level norm for a particular occupation and/or its classification in the locale where the employment is offered, and there is a reasonable probability that the employee's hours will be at or more than the 35 hours standard within 12 months of the commencement of employment.

(2) The less than 35-hour work week has been voluntarily requested by the employee for purposes of dependent care, or for other critical situations peculiar to that employee.

(3) The less than 35-hour work week is necessitated by special circumstances confronting the employer and there is a reasonable probability that the employee's hours will be at or more than the 35 hours standard within 12 months of the commencement of employment.

(4) For purposes of subsections (1), (2), and (3) the employee shall be offered and receive a benefit and compensation package commensurate on a prorata basis with that offered to other employees. In no event shall an employee's hours be used as reason for denying any such benefits or other compensation to that employee.

(5) Upon proof by the contractor and a finding of good cause by the panel, the panel may find that less that 35 hours a week constitutes full time employment if the hours per week are customary for the industry, occupation and class of employment and the locale where the employment occurs, and/or the hours are considered full-time employment for purposes of a collective bargaining agreement. In no event shall the hours permitted herein and in subsections (1), (2), and (3) be less than 25 hours. The days worked may be less than five, but shall be more than two.

(6) If the hours as set forth in subsection (1) and (2) are not extended to 35 hours a work week within 12 months of the commencement of employment, then 100 percent of the amount attributable to the cost of training the less than 35 hour employee shall be returned, if paid, to the Employment Training Panel, except as provided in subsection (9) below.

(7) For purposes of implementation of this provision, subsection (1), (2), or (5) can be invoked only as part of training contracts. Subsection (3) can be invoked at any time from the enrollment of a trainee in training to the beginning of the effected trainee's period of employment following training.

(8) The panel may, when granting an exemption to the 35-hour work week standard, withhold up to 100 percent of the amount attributable to the cost of training a less than 35 hours employee until the standard full-time employment has been achieved, but the monies shall not be deemed earned if full-time employment is not achieved within 12 months of the commencement of employment by the trainee.

(9) The panel may, upon a showing of good cause by the contractor, deem earned whatever amount it finds to be reasonable for the less than 35 hour employee if full-time employment has not been achieved within a 12 month period following the commencement of employment.

(10) Where training received is for employment in the entertainment industry, an individual shall be deemed "retained in employment":

(A) Upon completion of training, the individual completes 500 hours of work in a six-month period at a wage to be specified according to the trainee's particular vocation.

(B) An extra six-month employment period in which to complete 500 work hours shall be granted, after a review of each individual's case by the Panel, if it can be shown that one or more of the following triggers provide good cause for a six month extension: the cancellation of a television show or film; strikes or a threat of a strike; lockouts; the illness, pregnancy or injury of the trainee; shooting delays caused by location problems, permit problems, financing problems, equipment failure, illness or pregnancy of key cast or crew members, or disputes among parties involved in the production.

(C) A trainee's employment is not to be limited to employment with a single industry employer; a trainee should be allowed to have multiple employers while compiling 500 work hours.

(D) A trainee may be employed only by an employer or employers specifically listed in the agreement while completing the 500 work hour requirement.

(E) An employee may not be allowed to include, as part of the total hours worked, work performed as an independent contractor, unless the trainee maintains self-elected, unemployment insurance coverage.

(i) "Facility" means one contiguous work site at the same geographic location.

(j) "Group of employers" means

(1) two or more employers which combine efforts to form a consortium in order to meet the common training needs by specific occupational categories or address common training needs based on industrial trends, and/or

(2) two or more employers which combine efforts whereby the primary employer assumes liability for the Panel contract, with secondary agreements between the primary employer and the supplier employers (or both the primary employer and the secondary suppliers contract with the Panel), and trains the employees of one or more of its suppliers due to the special and unique needs of the primary employer, and/or

(3) a professional association, trade association, or joint apprenticeship training committee and/or

(4) any economic development corporation which has been in existence for more than one year and whose Board of Directors is composed of a majority of California employers eligible to participate in a Panel funded agreement. The Board of Directors must approve the Panel agreement.

(k) [Repealed]

(l) [Repealed]

(m) "Labor market information" means economic, occupational, geographic and demographic characteristics of the labor market that encompasses population and labor force composition, industry and occupational trends and outlook, job opportunities, hiring and training practices, skill requirements and trends, wages, labor force estimates, career ladders, and occupational supply and demand.

(n) "Literacy training" means basic, job-related skills including math, reading, and language skills necessary for the trainee's job performance and employment retention in a job with definite career potential and long-term job security.

(o) "Minority" refers to a person whose ethnic origin is:

(1) Black: those individuals with black racial groups of Africa;

(2) Asian American: those individuals of Chinese, Japanese, Korean, Okinawan, Thai, and Vietnamese, Southeast or Southwest Asian descent;

(3) Hispanic American: those individuals of Mexican, Puerto Rican, Cuban, Central or South American descent;

(4) Polynesian: those individuals of Hawaiian, Samoan, Tongan, Tahitian, Gilbertine, Fijian, and Guamanian descent;

(5) American Indian or Alaskan Native: those individuals having origins in any of the original peoples of North America; and,

(6) Filipino: those individuals having origins in the peoples of the Philippine Islands.

(p) "Minority-owned business" means a business concern that is all of the following:

(1) At least 51 percent owned and operated by one or more minorities, or, if a publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities; and,

(2) Managed by, and the daily business operations controlled by, one or more minorities; and,

(3)A sole proprietorship, partnership, or domestic corporation with its home office located in the United States that is not a branch or subsidiary of a foreign corporation, firm, or other business.

(q) "Panel" means the organization inclusive of the appointed members and civil service staff of the Employment Training Panel.

(r) "Payment earned" means the amount of ETP training cost reimbursement a contractor is entitled to based on the final billing per trainee. For payment to be earned, the trainee must complete the minimum number of training hours, and be retained in employment and paid the post-retention wage as specified in the ETP Agreement.

(s) "Progress payment" means those partial payments that must be returned to the panel unless subsequently earned.

(t) "Proprietary information" means information provided by an employer to the panel relative to a company's favorable or unfavorable business conditions or financial circumstances, which, if disclosed, the employer believes would provide an advantage to competitors or a disadvantage to the business or its employees.

(u) [Repealed]

(v) "Retained in employment"

(1) Means the trainee has been retained in a job:

(a) With definite career potential and a substantial likelihood of long-term job security,

(b) Directly related to the training provided, and,

(c) With a single employer for at least 90 days after the end of training unless it is not customary for a worker to be employed 90 consecutive days with a single employer; then a requirement of 500 hours of employment during a period not to exceed 272 calendar days after completion of training shall be substituted.

(2) For new hire trainees who have been placed in qualifying employment after completion of training by a training agency and who do not complete 90-days of employment retention with the initial employer, the training agency may place the trainee in subsequent qualifying employment with an eligible employer for an additional 90 days within the term of the contract.

(3) If a trainee voluntarily terminates his/her employment after the completion of training, but before the end of the applicable retention period, the contractor will be reimbursed for that trainee if that trainee is employed by another eligible employer for the applicable retention period for at least the same earnings as set forth in the Agreement. However, the Panel will reimburse for a trainee who is employed by another eligible employer for earnings which are less than required by the Agreement as long as the trainee's earnings are equal to the earnings required by *Unemployment Insurance Code Section 10201(g)* or, if applicable, Section 10214.5(a)(1), and the trainee is using the skills for which he/she was trained. The retention with any subsequent employer must be within the term of the Agreement.

(4) If after the completion of training and before the end of the applicable retention period, the trainee has a break in employment necessitated by the Family Medical Leave Act (*Government Code Section 12945.2*) or an Act of God, the trainee shall be deemed to have completed the retention period.

(w) "Small business" means:

A business concern in which the principal place of business is located in California and the owners (or officers in the case of a corporation) of such business are domiciled in California, which is independently owned and operated and has no more than 250 full-time employees. Special consideration may be given to a small business with 100 or fewer full-time employees.

A "franchise" may be considered a small business if it meets the requirements stipulated above and consists of an arrangement in which the owner of a trademark, trade name, or copyright licenses others, under specified conditions or limitations, to use the trademark, trade name, or copyright and the business relationship between the two parties is an arm's-length relationship between two independent contractors with their respective rights determined by a contract.

For the purposes of this section, a company may not be considered a small business if it is a subsidiary corporation, "Subsidiary corporation" means a corporation that is subject to a parent corporation that has the power either directly or indirectly or through another corporation or series of other corporations to elect a majority of its directors.

(x) [Repealed]

(y) "Training" means the delivery of instruction that is designed to develop and/or improve workforce skills and knowledge for jobs with definite career potential and the substantial likelihood of long-term job security. Training shall consist of at least eight hours for a small business employer and at least 24 hours for all other employers, except the panel may modify the minimum hours for good cause on a case-by-case basis. The delivery method may be classroom, laboratory, electronic or Computer-Based Training (CBT).

(1) "Classroom training" is formal instruction provided in a setting removed from the trainee's usual work environment. Trainees in a classroom must meet regularly for training in a specific skill under the constant and direct guidance of a qualified trainer.

As defined herein, Classroom training must include all of the following features:

(A) The trainer must be present at the site during all hours of training;

(B) The trainer's time must be dedicated exclusively to instruction during all hours of training

(C) Trainee attendance must be documented as to date, time and total hours in a form and manner acceptable to ETP (See Section 4442);

(D) The training sessions must be conducted at a site that is open and accessible to ETP monitors consistent with Section 4443.

(2) "Laboratory training" is hands-on instruction or skill acquisition under the constant and direct guidance of a qualified trainer. Laboratory training may require the use of specialized equipment or facilities. Laboratory training may be conducted in a simulated work setting, or at a productive work setting.

(A) "Simulated Laboratory training" is reimbursable at the class/lab rate.

(B) "Productive Laboratory training" is also reimbursable at the class/lab rate but only as approved by the Panel on a case-by-case basis, for good cause shown.

As defined herein, Productive Laboratory training must include all of the features set forth in Subsection (1) (A-D) above.

(3) "Advanced Technology training (AT)" is customized to occupations that involve the production or use of the most sophisticated equipment and software in fields such as electronics, computers and biotechnology. This type of training is reimbursable at a higher class/lab specific to AT, but only as approved by the Panel on a case-by-case basis, for good cause shown.

As defined herein, AT training must include all of the features set forth in Subsection (1) (A-D) above.:

(4) "Electronic-delivery training (E-learning)" is instruction delivered by a live trainer through a web-based system. E-learning training is reimbursable at the class/lab rate but only as approved by the Panel on a case-by-case basis, for good cause shown.

As a condition of reimbursement at the classroom/laboratory rate, E-Learning training must follow a specific and standardized Curriculum for each course identified in Exhibit B: Menu Curriculum and be delivered to a fixed number of enrolled trainees. In addition, the live trainer must be available for

interaction with all trainees in real-time during all hours of training, consistent with the course Curriculum.

As defined herein, E-Learning training must include the features set forth in Subsection (1) (C & D) above.

(5) "Computer Based Training (CBT)" is training delivered through a computer program at a pace set by the trainee. There is no requirement for delivery by a live trainer. This type of training need not be interactive. This type of training is not reimbursed at the class/laboratory rate, but at a reduced rate specific to CBT.

Reimbursement for each completed CBT course shall be for the standard number of hours to complete that course, as designated by the vendor that developed the course.

CBT hours should not be established unilaterally by employers or Multiple Employer Contractors. When the CBT course was created by employers or Contractors, they must have established a benchmark number of hours for completion that is set forth in a specific and standardized Curriculum, for each CBT course identified in Exhibit B: Menu Curriculum. Reimbursement for CBT shall be limited to the benchmark number of hours, on a per-trainee basis.

Upon completion of the CBT course, the employer must certify that the trainee has achieved competency in the skills covered by the training.

(6) Reimbursement at the class/lab rate or AT rate shall be earned only for hours of training actually delivered, on a per-trainee basis.

(7) Classroom/laboratory, Productive Laboratory, Advanced Technology and E-Learning training must comply with specific trainer-to-trainee ratios, as shown below. These ratios do not apply to CBT.

(A) Class/lab retraining: 1 to 20.

(B) Class/lab new-hire training: 1 to 15.

(C) Productive Laboratory (retraining and new-hire training): 1 to 10.

(D) Advanced Technology (retraining and new-hire training): 1 to 10.

(E) E-Learning (retraining and new-hire training): 1 to 20.

(z) "Training agency" means any public or private training entity, state or local school, or education agency that has been in existence for a minimum of two years preceding the application for panel funding, and has an established history of providing training and placement services to the public.

(aa) "Veteran" means an individual who served on active duty for more than 180 days, and was discharged or was released from active duty because of a service-connected disability. Active duty refers to the full time duty in the Armed Forces. Any period of duty for training in the reserves or National Guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in the line of duty, is considered "active" duty.

(bb) "Woman-owned business" means a business concern that is all of the following:

(1) At least 51 percent owned and operated by one or more women or, in the case of publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and,

(2) Managed by, and the daily business operations controlled by, one or more women, and,

(3) A sole proprietorship, partnership, or domestic corporation with its home office located in the United States that is not a branch or subsidiary of a foreign corporation, firm, or other business.

(cc) "Written notification" means a document prepared by the employer/contractor where a potential retrainee is currently employed, and received by the employee/retrainee either in person or by mail, stating that the employee will be laid off. This document may also be referred to as a Notice of Layoff. A Notice of Layoff shall be issued in lieu of a certification for the need for retraining as specified in section 4441.

(1) This notice shall contain, but is not limited to, the following information:

(A) Name and address of the employer;

(B) Employee name and social security number;

(C) Employee job title;

(D) Date notice was mailed or presented to the employee or the date of separation consistent with a collective bargaining agreement;

(E) Date of impending layoff; and,

(F) Employer signature.

(2) The notice must have been issued by the employer and presented to the affected employee/retrainee by the time an application for funding is submitted to Employment Training Panel staff.

(3) The notice shall indicate that the date of layoff is within two years of the date the application for funding is presented to the Panel.

(4) The reason for issuance of the termination notification/notice of layoff shall be directly related to the employer's inability to provide continued employment.

(dd) "Enrollment" means the process of registering an employee with the Panel as an eligible participant in a Panel funded training program. Concurrent enrollment of any trainee in more than one Panel funded training program is prohibited.

(ee) "Frontline worker" means an individual who directly produces or delivers goods or services, in accordance with the following standards:

(1) An individual who is not exempt from payment of overtime compensation under state or federal law is a frontline worker;

(2) An individual who is covered by a collective bargaining agreement is deemed a frontline worker;

(3) An individual who is exempt from payment of overtime compensation under state or federal law and is directly producing or delivering goods or services may be a frontline worker.

The Panel will make a determination of exempt status on a case-by-case basis and at its sole discretion under Subsections (1) and (3) above. In so doing, the Panel will follow the standards for determining exempt status set forth in *Labor Code Sections 515, 515.5,* and *516* and the Wage Orders of the Industrial Welfare Commission. The Panel will also consult applicable state and federal wage and hour law guidelines published by the Division of Labor Standards Enforcement under the Department of Industrial Relations. (See DLSE Enforcement Manual at www.dir.ca.gov.)

For purposes of Special Employment Training projects a frontline worker may also be the owner of a business with at least one but less than 10 full-time employees, whose primary duties consist of directly producing or delivering goods or services.

(hh) "Working poor" means workers who have full-time jobs and stable employment, but earn less than the ETP Minimum Wage under *Section 10201(f) of the Unemployment Insurance Code*. (See also, Section 4418.) These workers lack the essential job skills necessary to improve their employment opportunities. Their lack of job skills is often accompanied by limited education and/or English-speaking skills.

(ii) [Reserved]

(jj) "High performance workplace" means a workplace where frontline workers are equipped with problem solving and decision-making skills that promote increased productivity.

(kk) "Job creation" means a type of funding priority for projects that primarily train either of the following:

(1) workers who are eligible to receive Unemployment Insurance benefits in California; or who have exhausted eligibility for Unemployment Insurance benefits payable from this state within the previous 24 months; or

(2) workers employed by a business that is locating in California or expanding its operations in this state.

To qualify as a "job creation" project under the first prong of this definition, the workers must be trained in job-related vocational skills that are necessary to attain a job with a California employer;

To qualify under the second prong, the workers must be trained in job-related vocational skills that are necessary to attain a new job position with a business that is locating in or expanding its operations in California.

(ll) "Contractor" means the individual or entity responsible for satisfying the duties and obligations set forth in a contractual agreement with ETP for training cost reimbursement.

The Contractor may be an employer or group of employers. The Contractor may also be a training agency; a local Workforce Investment Board; or, a grant recipient or administrator under the Workforce Investment Act of 1998 as further defined at *Unemployment Insurance Code Section 10205(c)*. The agreement may be in the form of a Single Employer Contract (SEC) or a Multiple Employer Contract (MEC).

(mm) "Multiple Employer Contract" (MEC) means an agreement with ETP for the reimbursement of training costs, wherein the Contractor's duties and obligations are assumed by a group of employers, training agency or other eligible Contractor on behalf of multiple participating employers.

REFERENCE:

Sections 10200, 10201, 10201.5, 10202, 10202.5, 10203, 10204, 10205, 10206, 10207, 10208, 10209, 10210, 10211, 10212.2, 10213, 10214, 10214.5, 10214.7, 10214.9, 10215 and 10217, Unemployment Insurance Code; and *Sections 515, 515.5 and 516, Labor Code*.

HISTORY:

See official source at ETP Regulations or http://ccr.oal.ca.gov/linkedslice/default.asp?SP=CCR-1000&Action=Welcome

Most recent:

23. Amendment of subsection (b), new subsection (c), repealer of subsections (d) and (e), subsection relettering, amendment of newly designated subsection (d) and subsections (y)-(y)(2), new subsections (y)(2)(A)-(B), repealer and new subsections (y)(3)-(5), repealer of subsections (y)(5)(A)-(B), repealer and new subsections (y)(6)-(7) and repealer of subsections (y)(8)(A)-(B), (ff) and (gg) filed 2-15-2011; operative 3-17-2011 (Register 2011, No. 7).

§ 4401. Evaluation Process

REFERENCE:

Sections 10204, 10205(c), (d), (e), (f), (g), (i) and 10206, 10207, 10209, 10210, 10214.5, Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Repealer filed 7-18-2007; operative 8-17-2007 (Register 2007, No. 29).

§ 4401.1. In-Kind Contributions

The Contractor must make In-Kind Contributions toward the cost of retraining. This requirement does not apply to new hire training. The Contractor is solely responsible for reporting In-Kind Contributions to ETP.

(a) In Kind Contributions may be monetary or non-monetary but they must be in addition to the training costs reimbursed by ETP. In-Kind Contributions must demonstrate a commitment to the successful outcome of the retraining project.

(b) A Single Employer Contractor must contribute at least 100 percent of the approved amount of ETP funding, except in the case of a small business with 100 or fewer full-time employees where the contribution must be at least 50 percent of the approved amount.

(c) A Multiple Employer Contractor must contribute at least 50 percent of the approved amount of ETP funding based on the sum of all participating employer contributions to the retraining project as a whole, as well as any contributions that may be made by the Multiple Employer Contractor.

(d) In-Kind Contributions may consist of wages and benefits paid to trainees during the hours of ETP-funded training. They may include out-of-pocket costs, such as one or more of the following:

(1) One-time or ongoing assessment of training needs/results

(2) Development of the retraining proposal or curriculum

(3) Costs or fees that exceed the amount reimbursed by ETP

(4) Facility and equipment usage directly attributable to the retraining project

(5) Training textbooks, programs, aids and supplies

(6) Lost production time during the hours of training

(7) Wages paid to "replacement workers" during the hours of training

In-Kind Contributions may also include the cost of training non-eligible participants, and conducting on-the-job training in the same or similar curriculum. They may not include costs paid by, or fees absorbed by, a subcontractor.

(e) In-Kind Contributions may not include costs that result from a legal mandate. Nor may they include costs that are incurred in the course of complying with standards imposed by the law, or otherwise, such as one or more of the following:

(1) professional or vocational licensing or certification

(2) Job-related physical examination or drug screening

(3) vocational safety training

(4) equal employment opportunity training

In-Kind Contributions may not include substantial contributions within the meaning of Section 4410. In addition, they may not include refundable "deposits" charged by the Contractor to a participating employer(s) in order to ensure trainee participation or retention.

REFERENCE:

Sections 10200(a)(1) and 10206(b), Unemployment Insurance Code.

HISTORY:

1. New section filed 6-28-2006; operative 7-28-2006 (Register 2006, No. 26).

§ 4401.5. Employer Eligibility

(a) An employer is eligible for Panel funding for purposes of retraining or new hire placement of trainees if it is subject to payment of the California Unemployment Insurance (UI) tax.

(b) A public entity or nonprofit organization that has elected an alternate method of funding its liability for unemployment insurance benefits is only eligible as a "participating employer" for the placement of new hire trainees under a Multiple Employer Contract (MEC).

This limited eligibility is for the purpose of "incidental placements" as part of a training project designed to meet the needs of one or more eligible employers. These incidental placements will be capped at 20% of the total trainee population. This cap will be applied by ETP to the number of trainees who have completed training and retention and reached the applicable Minimum Wage, at the time of fiscal closeout for the training project as a whole.

(c) The Panel may modify the 20% cap on a case-by-case basis, for good cause shown.

(d) The MEC contracting entity is responsible for ensuring that each participating employer is either subject to payment of the California UI tax as set forth in Subsection (a), or is within the 20% cap in Subsection (b), of this regulation.

(e) The MEC contracting entity cannot consider incidental placements in evaluating the new-hire training needs of an occupation or industry. Instead, it must design a training project that will address the shortage of workers identified by an employer advisory board, as set forth in Section 4406.

(f) Federal agencies are eligible as participating employers for incidental placements.

REFERENCE:

Sections 10201(b), Unemployment Insurance Code.

HISTORY:

1. New section filed 5-18-98; operative 5-18-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 21).

2. Editorial correction printing inadvertently omitted section (Register 98, No. 25).

3. Amendment of section and NOTE filed 7-18-2007; operative 8-17-2007 (Register 2007, No. 29).

4. Amendment of subsection (b), new subsection (c), subsection relettering and amendment of newly designated subsections (d)-(f) filed 2-15-2011; operative 3-17-2011 (Register 2011, No. 7).

§ 4402. Application Process

REFERENCE:

Section 10205(c), (d), (e), (i), 10206(a)(1), (c), (d), (e), (f), and 10207(a), Unemployment Insurance Code.

HISTORY:

1. New section filed 8-19-91; operative 8-19-91 (Register 92, No. 1).

2. Repealer filed 7-18-2007; operative 8-17-2007 (Register 2007, No. 29).

§ 4402.1. Contractor Meetings

REFERENCE:

Section 10200, Unemployment Insurance Code.

HISTORY:

1. New section filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

2. Repealer filed 8-9-2006; operative 9-8-2006 (Register 2006, No. 32).

§ 4402.2. Critical Proposal

(a) The Panel recognizes that certain applications/proposals for Panel funding are uniquely critical to the California economy, and therefore the development of such applications/proposals must be expedited.

(1) The Executive Director determines if an application/proposal meets the criteria specified in subsection (2) for immediate attention. Such a project will be designated as a "Critical Proposal", and the development of that project will be given priority over other projects.

(2) "Critical Proposals" are proposals that are part of a State of California economic development effort to provide incentives for businesses that are:

(A) expanding within California through the addition of new jobs as a result of a new product or new business function; or

(B) moving operations from out-of-state to California; or

(C) adding a new facility in California; or

(D) considering relocation of a California facility or operation to a location outside of California.

(b) The Panel may modify the following requirements for Critical Proposals on a case-by-case basis:

(1) Substantial contribution requirement, provided in *22 CCR § 4410*, including, but not limited to, cases where a California business currently subject to a substantial contribution proposes to expand an existing facility by adding and training new employees for a new product line or business function

(2) Limit on literacy training hours, provided in *22 CCR § 4420*, in cases where the business has employees with limited English skills and demonstrates that their employees require an amount of literacy training which exceeds the limit specified in *22 CCR § 4420*

(3) Turnover rate, provided in *22 CCR § 4417*, including, but not limited to, situations where an out-of-state business is moving to California and the business' turnover rate immediately prior to the announcement of the move meets the criteria set out in *22 CCR § 4417*

(4) Out-of-state vendor limitation, provided in *22 CCR § 4421*, including, but not limited to, cases where an out-of-state business is moving its equipment (as well as its business) to California and the only people experienced with the equipment are the business' former employees who are located outside California

(5) Definition of laboratory training, provided in *22 CCR § 4400 (y)*, including, but not limited to, situations where a business must comply with industry-specific federally-mandated criteria for the delivery of training.

(6) Training recordkeeping requirements, provided in *22 CCR § 4442*, including, but not limited to, cases where a business must comply with industry-specific federally-mandated criteria for record keeping.

REFERENCE:

Sections 10200(b) and 10205(k), Unemployment Insurance Code.

HISTORY:
1. New section filed 5-18-98; operative 5-18-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 21).

2. Amendment of section and Note filed 8-17-2004 as an emergency; operative 8-17-2004 (Register 2004, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-15-2004 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 8-17-2004 order transmitted to OAL 11-12-2004 and filed 12-27-2004 (Register 2004, No. 53).

4. Amendment of subsection (a)(2) and repealer of subsection (a)(3) filed 1-27-2010; operative 2-26-2010 (Register 2010, No. 5).

§ 4403. Coordination with Other Agencies

REFERENCE:

Sections 10200(a)(4), 10200(c), 10204(a) and (c), 10205(c) and 10214.5, Unemployment Insurance Code; and Title *29, U.S.C. Section 794*(d).

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Amendment of section and Note filed 9-27-2005; operative 9-27-2005 pursuant to *Government Code section 11343.4* (Register 2005, No. 39).

3. Repealer filed 8-9-2006; operative 9-8-2006 (Register 2006, No. 32).

§ 4403.1. Apprenticeship Training

(a) The Panel shall not fund training projects that replace, parallel, supplant, compete with or duplicate existing apprenticeship programs.

(b) The Panel may fund pre-apprenticeship training projects designed to prepare trainees for further training in trades that have a Division of Apprenticeship Standards (DAS)-approved apprenticeship program. The pre-apprentice must enroll in such a program, for the relevant trade, upon completion of the ETP-funded training. The requirement for enrollment in a DAS-approved apprenticeship program may be waived by the Panel at its discretion, on a case-by-case basis, where:

(1) the pre-apprentice cannot enroll in a DAS-approved program in a timely manner, such as when the relevant trade is impacted for new hires, or

(2) the pre-apprentice cannot pass the qualifying test required for enrollment in a DAS-approved program.

(c) The Panel may fund post-apprenticeship training projects designed to upgrade the skills of journey-level workers. In order to qualify for this training, the journey-level worker must have:

(1) completed a DAS-approved apprenticeship program for that trade, or

(2) worked in the relevant trade for a period of time equivalent to the training period required under a DAS-approved apprenticeship program for that trade.

REFERENCE:

Section 10200(a)(4), Unemployment Insurance Code.

HISTORY:

1. New section filed 9-27-2005; operative 9-27-2005 pursuant to *Government Code section 11343.4* (Register 2005, No. 39).

§ 4404. Collective Bargaining Agreements

(a) Prior to presenting an application for a proposed training project to the panel, the contractor shall notify the appropriate collective bargaining agent which represents workers for whom training is proposed of its intent to apply for Panel funding. The notice of intent shall contain the information regarding the proposed training, the impacted employee population, the name of the collective bargaining agent, and the effective date of the application.

(b) Upon receipt of the notice of intent pursuant to subdivision (a), the labor organization representing effected workers shall notify the panel, in writing, of its concurrence with the contractor's proposal. The written notification shall be signed by an authorized representative of the collective bargaining agent and received by the panel prior to further development of the agreement. The labor organization shall have the opportunity to participate in the agreement's development.

REFERENCE:

Section 10205(e), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

§ 4405. Funding Limitations

(a) In order to make Panel funds available to the greatest number of trainees, the Panel may impose funding restrictions on contracts and/or establish certain funding priorities. Any funding restrictions or application of priorities shall reflect statutory criteria and may include, but are not limited to, the following:

(1) Setting dollar caps on contracts and limiting the term of training projects.

(2) Requiring contractors to contribute a specified dollar amount to each contract in addition to in kind contributions and substantial contributions provided for both in the law and these regulations.

(3) Assigning priority to contracts proposing training for new hire and recently hired trainees.

(4) Assigning priority to small business and/or industries.

REFERENCE:

Sections 10205(c), (d), (j), (k), 10206(b), 10207(b), 10213 and 10213.5, Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Repealer and new section filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

3. Amendment of subsection (a) filed 2-15-2011; operative 3-17-2011 (Register 2011, No. 7).

§ 4406. New Hire Training

Panel approval for "new hire training" as defined in *Unemployment Insurance Code Section 10201(g)* is subject to the following:

(a) Training must be in job-related skills for a specific occupation in a given industry or for specialized occupations across an industry spectrum. In either case, the training must be for occupations with a demonstrable statewide or local shortage of workers.

(b) Training may include generic vocational skills such as office automation or customer service as an ancillary component of the overall curriculum for training in skills needed by a specific or specialized occupation.

(c) The Contractor must demonstrate to the satisfaction of the Panel that it has established a plan for recruiting eligible trainees and prospective participating employers; and, an employer advisory board with prospective participating employers as members.

(d) The employer advisory board must give the Contractor guidance on which job-related skills are needed in the specific or specialized occupations, and information about the shortage of workers in said occupations. It must also provide an ongoing evaluation of the curriculum and other material aspects of the training project.

REFERENCE:

Sections 10200(a), 10205(b), (c) and (e), 10209(a) and (g) and 10210(b), Unemployment Insurance Code.

HISTORY:

1. New section filed 8-19-91; operative 8-19-91 (Register 92, No. 1).

2. Amendment of subsection (a), repealer and new subsections (a)(1) and (a)(2), and new subsection (a)(3) filed 3-9-93; operative 3-9-93 (Register 93, No. 11).

3. Repealer and new section filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

4. Repealer and new section filed 6-28-2006; operative 7-28-2006 (Register 2006, No. 26).

5. Repealer of subsection (a) and subsection relettering filed 1-27-2010; operative 2-26-2010 (Register 2010, No. 5).

§ 4407. Small Business Projects

REFERENCE:

Sections 10200, 10204(a) and (b), 10210, 10212(d), 10213 and 10213.5, Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Repealer of subsections (a)-(a)(3), subsection relettering and amendment of Note filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

3. Amendment of section heading, section and Note filed 1-8-2001 as an emergency; operative 1-8-2001 (Register 2001, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-8-2001 or emergency language will be repealed by operation of law on the following day.

4. Reinstatement of section as it existed prior to 1-8-2001 emergency amendment by operation of *Government Code section 11346.1(f)* (Register 2001, No. 25).

5. Repealer filed 3-12-2007; operative 4-11-2007 (Register 2007, No. 11).

§ 4407.1. Small Business Owners

(a) A proposal to train the employees of a small business may include training for the owner of the business provided the following criteria are met:

(1) The business employs 100 or fewer full-time employees, excluding the owner.

(2) The owner is an individual having all or a substantial (at least 20%) financial investment in the business, and is directly involved full-time in the day-to-day operation of the business.

(3) The owner is not subject to the eligibility provisions of *§ 10201(c) of the Unemployment Insurance Code*.

(4) At least one employee must participate in training along with the owner of the business.

(5) The business is participating in the Panel's Small Business Pilot Project.

(b) Training for small business owners under this section is not limited to business management skills.

(c) For purposes of this regulation, the Small Business Pilot Project is the Panel's pilot project which will test an expedited application and contract development process designed to allow a greater number of small businesses with 100 or fewer employees to participate in Panel-funded training.

REFERENCE:

Sections 10200(a), 10201(c) and 10203, Unemployment Insurance Code.

HISTORY:

1. New section filed 11-18-2002 as an emergency; operative 11-18-2002 (Register 2002, No. 47). A Certificate of Compliance must be transmitted to OAL by 3-18-2003 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 11-18-2002 order transmitted to OAL 3-18-2003 and filed 4-28-2003 (Register 2003, No. 18).

§ 4408. California Career Ladders to the 21st Century Training

REFERENCE:

Sections 10200, 10201(c) and (f) and 10213, Unemployment Insurance Code.

HISTORY:

1. New section filed 8-19-91; operative 8-19-91 (Register 92, No. 1).

2. Amendment of section heading, section and Note filed 11-6-2001 as an emergency; operative 11-6-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-6-2002 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 11-6-2001 order transmitted to OAL 3-6-2002 and filed 4-16-2002 (Register 2002, No. 16).

4. Repealer filed 8-9-2006; operative 9-8-2006 (Register 2006, No. 32).

§ 4409. Special Employment Training Projects

(a) The Panel may allocate up to fifteen (15) percent of the annually available training funds for Special Employment Training (SET) projects to improve the skills and employment security of frontline workers, as defined in Section 4400(ee), who earn at least the state average hourly wage.

(1) SET projects are not subject to the out-of-state competition requirement specified in Section 4416.

(2) SET trainees are not subject to the eligibility provision of *Section 10201(c) of the Unemployment Insurance* (UI) Code.

(3) The Panel shall identify industries and occupations that are priorities for funding as a SET project, in the annual Strategic Plan.

(4) Each SET project shall be funded for no more than $ 500,000, although the Panel may waive the cap for individual SET projects on a case-by-case basis.

(5) Each SET project must result in full-time employment, for all trainees who successfully complete training, except those receiving small business skills training as provided under subsection (b).

(6) The Panel may fund SET projects for frontline workers who earn up to 25% below the state average hourly wage as follows:

(A) For training in an industry sector identified by the Panel as a funding priority in accordance with Unemployment Insurance Code Section 10200(b); or
(B) For training under a Critical Proposal within the meaning of Section 4402.2.

This wage modification, including the determination of funding priority, shall be made on a case-by-case basis. (See the Panel's FY 2009/10 Strategic Plan for more information on high-priority industry sectors.)

(7) The Panel may also fund SET projects for frontline workers who earn less than the state average hourly wage, but at least the ETP Minimum Wage under *Section 10201(f) of the Unemployment Insurance Code*, if they have at least two barriers which prevent them from fully participating in the labor force. Barriers may include mental or physical disability, illiteracy, limited English proficiency, limited math skills, or some similar impediment.

Notwithstanding the limitations under Section 4420, the Panel may fund the same number of basic skills and literacy training hours as are funded for vocational skills training, on a per-trainee basis.

(b) The Panel may fund a SET project in a High Unemployment Area. In that case, trainees may earn less than the state average hourly wage and/or have a modified retention period in accordance with Section 4429.

(c) The Panel may fund entrepreneurial training as a SET project for small business owner(s) who meet the definition of "frontline workers" at Section 4400(ee). In addition, the business must qualify as an "employer" within the meaning of *Section 10201(b) of the Unemployment Insurance Code*.

(1) The following definitions apply, for the purpose of entrepeneurial training:

(A) "Owner" means one or more individuals who each have a substantial (at least 20 percent) financial investment in the business, and direct full-time involvement in the day-to-day operations of the business. The spouse of an "owner" also qualifies if he or she has direct full-time involvement in the day-to-day operations.

(B) "Employee" means an individual who was employed full time prior to the first day of training for the owner(s). An employee cannot be leased or assigned from a temporary employment agency or other provider.

(2) The owner(s) shall not be counted in meeting the requirement for less than ten full-time employees.

(3) Wages after training are not relevant to small business owner training, since owners typically do not receive an hourly wage.

(4) The entrepreneurial training must be in business management and/or related skills including but not limited to development, business and/or marketing plan, tax requirements, and permit or licensing procedures.

(5) The business must employ at least the same number of full-time employees on the 91st day after the owner's training, as were employed at the start of training. ETP may waive or modify this requirement on a case-by-case basis, for good cause.

(d) A training proposal developed and approved under this section shall meet all Panel requirements not otherwise modified or exempted by this section.

REFERENCE:

Sections 10200(a), 10201(c) and (f) and 10214.5, Unemployment Insurance Code.

HISTORY:

1. New section filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49). For prior history, see Register 96, No. 29.

2. Editorial correction of subsection (b)(6)(E) (Register 99, No. 50).

3. Amendment of subsections (b)(1) and (b)(5)(F) filed 12-8-99; operative 12-8-99 pursuant to *Government Code section 11343.4(d)* (Register 99, No. 50).

4. Amendment of section and Note filed 1-8-2001 as an emergency; operative 1-8-2001 (Register 2001, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-8-2001 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 1-8-2001 order, including further amendment of subsections (a)(5)(C) and (a)(6), transmitted to OAL 5-8-2001 and filed 6-20-2001 (Register 2001, No. 25).

6. Amendment of subsection (a), repealer of subsections (a)(5)-(a)(5)(C) and subsection renumbering filed 11-6-2001 as an emergency; operative 11-6-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-6-2002 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 11-6-2001 order transmitted to OAL 3-6-2002 and filed 4-16-2002 (Register 2002, No. 16).

8. Amendment filed 5-17-2006; operative 6-16-2006 (Register 2006, No. 20).

9. Amendment of subsection (a), new subsections (a)(6)-(a)(6)(B), subsection renumbering and amendment of subsection (b) filed 1-27-2010, operative 2-26-10 (Register 2010, No. 5).

§ 4409.1. Participating Employer Contributions

(a) A Multiple Employer Contractor may charge a participating employer(s) for training-related costs that are not reimbursed by ETP if the charge is compliant with the procedures set forth herein.

(b) A Multiple Employer Contractor may charge any of the following:

(1) A refundable deposit designed to ensure trainee participation or retention, which may not be included as in-kind contributions under the ETP Agreement. (See Section 4401.1(e).)

(2) A nonrefundable deposit as needed to conduct training needs assessments or provide other training-related services that go beyond the scope of funding under the ETP Agreement;

(3) A nonrefundable deposit to reimburse the Multiple Employer Contractor for out-of-pocket training costs incurred when a trainee does not satisfy the requirements for funding under the ETP Agreement, which may be billed to the participating employer(s) only after ETP has determined that payment cannot be earned for the trainee. (See Section 4400(r).)

(c) The charge must be consensual between the Multiple Employer Contractor and participating employer(s) as memorialized in a writing signed by both parties. The Panel is not a party to this agreement although it runs collateral to the ETP Agreement.

(d) The Multiple Employer Contractor must receive the Panel's prior review and written approval for this "collateral agreement" and any other writing conveyed by the Multiple Employer Contractor to a participating employer(s) that references the ETP program or uses the ETP name or logo.

(e) Panel approval of a collateral agreement regarding a charge will only be granted if the nature of the charge is clearly identified consistent with subsection (b) above. Also, if the Multiple Employer Contractor intends to refer any unpaid charge to a collection agency, a notice to that effect must be clearly set forth in the collateral agreement as a condition of approval.

(f) In no event may charges to a participating employer(s) duplicate ETP funding. In no event may a trainee(s) be assessed any portion of direct or related costs for training funded under an ETP Agreement.

REFERENCE:

Sections 10200 and 10205, Unemployment Insurance Code.

HISTORY:

1. New section filed 4-17-2000 as an emergency; operative 4-17-2000 (Register 2000, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-15-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 4-17-2000 order transmitted to OAL 8-11-2000 and filed 9-25-2000 (Register 2000, No. 39).

3. Amendment of section heading, section and Note filed 10-23-2007; operative 11-22-2007 (Register 2007, No. 43).

§ 4410. Substantial Contributions

(a) For retraining projects, every employer must make a substantial contribution toward the cost of training, in the amount of:

(1) Not less than 15% of the total training and administrative costs funded by the Panel, exclusive of in-kind contributions, if payment was earned for retraining at the same facility in the amount of $250,000 or more within the previous five years. However, this substantial contribution may not exceed 30%.

(2) Not less than 30% of the total training and administrative costs funded by the Panel, exclusive of in-kind contributions, if the employer made a substantial contribution under a prior or active ETP Agreement within the previous five years. However, this substantial contribution may not exceed 50%. Additionally, the Panel may decrease this substantial contribution, to no less than 15%, but only upon a showing of good cause by the employer.

(b) The following definitions of terms apply to substantial contributions at all levels:

(1) The term "facility" is defined in Section 4400(i).

(2) The term "payment earned" is defined in Section 4400(r).

(3) The term "ETP Agreement" means a single contract or Multiple Employer Contract (MEC) that sets forth performance standards for payment earned.

(4) The term "employer" has the same meaning as in Unemployment Insurance Code Section 10201(a). As used herein, employer includes any "participating employer" under a MEC. The identity of the employer shall be based on the California Employer Account Number (CEAN) assigned by the Employment Development Department for the purpose of Unemployment Insurance tax collection, coupled with the location of the facility at which retraining occurs.

(5) The term "previous five years" means a continuous time period beginning on the termination date of the prior ETP Agreement(s), except if the Panel anticipates payment earned of $250,000 or more in an active ETP Agreement as set forth in Subsection (c) below.

(c) Payment earned may be based on anticipated performance under an active ETP Agreement at the Panel's discretion, on a case-by-case basis. In exercising discretion, the Panel will consider the following factors:

(1) Remaining term of the ETP Agreement;

(2) Funding amount as approved or amended;

(3) Amount of payment earned to date;

(4) Number of trainees with completed retention;

(5) Percentage of payment earned relative to approved funding for all ETP Agreements that terminated in the previous five years.

In the event payment is not earned as projected, the Panel shall reverse the Substantial Contribution assessment for the subject contract.

(d) There is no substantial contribution requirement when the employer is a small business with 100 or fewer full time employees.

(e) The substantial contribution requirement may be modified for a Critical Proposal as set forth in Section 4402.2(b).

REFERENCE:

Section 10209(d), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Repealer filed 12-1-95; operative 12-1-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 48).

3. New section filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

4. Amendment of subsections (a) and (d)(1) filed 11-26-97; operative 11-26-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 48).

5. Amendment of subsections (a) and (b) filed 7-7-98; operative 7-7-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 28).

6. Amendment of section and Note filed 4-18-2008; operative 7-1-2008 (Register 2008, No. 16).

§ 4410.5. Exemption from Substantial Contribution Requirement

REFERENCE:

Section 10209, Unemployment Insurance Code.

HISTORY:

1. New section filed 11-9-98 as an emergency; operative 11-9-98 (Register 98, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-9-99 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 11-9-98 emergency transmitted to OAL 3-9-99 and filed 4-15-99 (Register 99, No. 16).

3. Repealer filed 4-18-2008; operative 7-1-2008 (Register 2008, No. 16).

§ 4411. Fixed-Fee Contracts

(a) The Panel may fund training contracts by applying a standard fixed -fee rate per trainee hour in lieu of a line-item budget to substantiate training costs. These standardized fixed-fee rates per hour may vary depending on the training delivery method (e.g., classroom/laboratory), complexity of the training, size of employer served, and the type of trainee (e.g., retrainee) receiving training.

(b) The research methodology to develop reasonable fixed-fee rates consists of an analysis of data collected from a representative sample of ETP budget-based contracts and the allowable costs/hour budgeted, and ETP subcontracted classroom/laboratory and structured on-site training costs. The rates were then benchmarked against applicable training market data from programs similar to ETP in other states and training fees charged by private and public training institutions in California.

(c) To ensure effective training delivery, a classroom/laboratory trainer to trainee ratio will be applied in contracts utilizing the fixed-fee rates. The classroom/laboratory ratio of trainer to trainees is determined using ETP historical data and private and public training institutional data. The classroom/laboratory ratio will also be applicable to training provided via videoconferencing. A trainer to trainee ratio is not applicable to structured on-site training and computer-based training since these training delivery methods are customized to an individual trainee's needs.

(d) The panel may adjust the established fixed-fee rates annually.

(e) For multiple-employer new hire training projects, the following may be included as a cost in addition to the fixed fee:

(1) Costs for staff salaries, fringe benefits, consumable supplies, printing, communications, equipment and software, premises, utilities, housekeeping services, travel and advertising/promotion of the ETP program that are incurred as a result of the following new hire activities:

(A) Recruitment of training participants.

(B) Trainee intake assessment to determine eligibility.

(C) Job development, and

(D) Job search assistance, and placement in specific jobs.

(f) For multiple-employer retraining projects the following may be included as costs in addition to the fixed fee:

(1) Costs for staff salaries, fringe benefits, consumable supplies, printing, communications, equipment and software, premises, utilities, housekeeping services, travel and advertising/promotion of the ETP program that are incurred as a result of the following activities:

(A) Recruitment of participating employers.

(B) Assessment of employer-specific job requirements.

(g) In no event shall the costs allowed in (e) and (f) above exceed 8% of the other training costs, except that up to an additional 4% will be allowed subject to Panel approval if the contractor makes a showing that the 8% is not sufficient to provide the contractor with the funds to do necessary recruitment of potential new hire trainees.

REFERENCE:

Section 10205(c) and 10206(a), Unemployment Insurance Code.

HISTORY:
1. New section filed 8-19-91; operative 8-19-91 (Register 92, No. 1).

2. Amendment of subsection (a), repealer and new subsections (b)-(e), amendment of subsection (f), repealer of subsections (g)-(g)(3) and amendment of Note filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

3. New subsections (g)-(i) and amendment of Note filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

4. Amendment of subsection (a), repealer of subsection (e), subsection relettering and amendment of newly designated subsection (h) filed 4-17-2000 as an emergency; operative 4-17-2000 (Register 2000, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-15-2000 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 4-17-2000 order, including further amendments, transmitted to OAL 8-11-2000 and filed 9-25-2000 (Register 2000, No. 39).

§ 4412. Reasonable Training and Administrative Costs for Budgets

Allowable ETP costs are those reasonable training and administrative costs in budget based agreements which include salaries, fringe benefits, and operating expenses and equipment necessary to provide training to eligible participants and to administer the training program. These costs shall bear a direct relation to the number of trainees to be retained in the program and the amount of training time specified in the agreement. ETP will only allow the portion of each eligible cost that can be properly allocated to the ETP training project. All costs must be incurred during the term of the agreement, and none of these costs may, in any way, be attributable to any other funding sources, except for employer contributions.

(a) Training costs:

(1) Salaries of those individuals (instructors, instructional aides, trainers, supervisors) providing classroom, laboratory, technology-based distance training, and structured, on-site training to the participants, for hours of actual delivery of instruction, and hours preparatory to instruction. Salaries of those individuals providing training support functions such as curriculum modification and preparation of training materials for the instructors and/or participants.

(2) Payroll taxes, including FICA, FUTA, State Unemployment Insurance, and Employment Training Tax, that are considered by the Department of Labor to be mandatory taxes incurred as business expenses. All payroll taxes should be individually identified.

(3) Fringe benefits are perquisites paid by an employer to employees, either voluntarily or by collective bargaining agreement, in addition to the employees' basic hourly or monthly compensation or remuneration.

(A) Fringe benefits may include one or more of the following:

1. vacation pay;

2. holiday pay;

3. sick leave;

4. health insurance plans;

5. hospitalization coverage;

6. retirement or pension plan;

7. life insurance (if the employer is not the beneficiary); and/or

8. military leave.

(B) The fringe benefit should be automatically and uniformly available to all those covered by the benefit package in comparable employment with the same employer.

(C) Any elective benefits selected on an individual basis, that are not available to all employees of an individual employer, should not be included in the list of fringe benefits.

(4) Operating expenses and equipment costs including consumable supplies, communications, equipment, software and licenses, premises, utilities, housekeeping services, travel, printing, transmission (computer time), system maintenance, and subcontractor and vendor fees directly related to the delivery of training.

(A) Equipment: The cost of equipment used for classroom, laboratory, and technology-based distance training may be claimed for the actual amount of time in use during those training components. The cost of equipment used for structured, on-site training is not allowable. The cost of purchased equipment, less salvage value, shall be prorated based on its useful life. Usefil life shall be determined using the class life established in the most recent version of IRS Publication 946. Useful life for training-related computer

hardware and software used in classroom/lab settings shall be three (3) years and one (1) year, respectively. Once the useful life has expired, the equipment or software cannot continue to be claimed as an expense; only service and maintenance costs are allowable.

The contractor's/subcontractor's total cost incurred to lease and/or rent equipment shall not exceed the cost to purchase the same equipment, less salvage value. The contractor/subcontractor must obtain three (3) written bids for leased equipment. Allowable lease/rental costs will be that portion of the total lease/rental cost (or purchase cost less salvage value, whichever is less) allocable to ETP training.

(B) Premises:

1. Premises, other than the facilities or work site of the contractor (i.e., off-site facilities), may be claimed as a training expense if sufficient justification is shown for the need to train at a location other than the contractor's facility or work site.

2. Multiple-employer contractors (MECs) may be reimbursed for a proportional share of actual on-site premise cost if the costs are incurred during classroom, laboratory, or technology-based distance training. Premises cost may include rent, depreciation of building cost, property/liability insurance, property tax, security, parking fees paid by contractor, and facility repair deemed necessary to the project. Each of these costs must be separately identified.

3. If all training takes place at the employer contractor's work site, the contractor's premises costs can only be allowed as an in-kind contribution.

(C) Utilities and Housekeeping: may be claimed for on-site training only if they are additional expenses incurred because of the training program or if the contractor is a MEC.

(D) Subcontractors: shall prepare individual, line-item budgets and are subject to the same limitations and restrictions as the primary contractor. Individual budgets are not required for contract laborers.

(E) Miscellaneous:

Miscellaneous costs shall not exceed ten percent of all other operating equipment and expenses associated with the delivery and administration of the training project. The contractor need not document the breakdown of the items included in this category.

(F) Profits are permitted only for private, for-profit MECs or for subcontractors and shall not exceed five (5) percent of the total training and administrative costs without justification and prior approval.

(5) For costs associated with new hire trainees, the following will be permitted as a training cost:

(A) Staff salaries, fringe benefits, consumable supplies, printing, communications, equipment and software, premises, utilities, housekeeping services, travel, and advertising/promotion of the ETP program that are incurred as a result of the following new hire activities:

1. Recruitment of training participants

2. Trainee intake assessment to determine eligibility

3. Job development, and

4. Job search assistance, and placement in specific jobs.

(6) For costs associated with multiple-employer contract retraining the following may be included as training costs:

(A) Recruitment of participating employers

(B) Assessment of employer-specific job requirements.

(7) In no event shall the training costs allowed in (5) or (6) exceed 8% of the other training costs, except that up to an additional 4% will be allowed subject to Panel approval if the contractor makes a showing that

the 8% is not sufficient to provide the contractor with the funds to do necessary recruitment of potential new hire trainees and/or employers.

(b) Administrative costs:

(1) Salaries of those individuals (managers, administrators, coordinators) for time directly spent in the implementation and operation of the training program, evaluation and modification of the program, scheduling and tracking of trainees, maintaining training records, and coordinating with ETP staff.

(2) Payroll taxes and fringe benefits related to program administration.

(3) Operating expenses and equipment costs related to program administration, similar to those allowed as training costs. For MECs, the overhead costs of doing business may be prorated between the ETP project and other activities. The portion of each allowable overhead cost applicable to the ETP project may be claimed; however, no portion of unallowable costs may be claimed. Examples of unallowable costs include: bad debts, fines/penalties, entertainment, lobbying, alcoholic beverages, contributions/donations, and state/federal income taxes.

(4) The salaries and fringe benefits of project directors, program managers, supervisors and other administrative positions who both instruct and supervise other instructors or otherwise perform both training and administrative duties as prescribed in an official duty statement shall be prorated among the training and administrative cost categories based on time records or other verifiable means.

REFERENCE:

Sections 10201(b), 10205(c), (d), (e), 10206(a)(1)(B), 10209(f), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Amendment of subsections (a)(3)(B) and (a)(3)(E) and new subsections (a)(4) and (a)(5) filed 3-9-93; operative 3-9-93 (Register 93, No. 11).

3. Change without regulatory effect adopting new subsection (a)(6) filed 5-11-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 20).

4. Amendment of section heading, section and Note filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

5. Amendment of subsections (a)(1), (a)(3)-(a)(3)(A) and (a)(3)(B)1.-2. and amendment of Note filed 12-20-99 as an emergency; operative 12-20-99 (Register 99, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-18-2000 or emergency language will be repealed by operation of law on the following day.

6. Amendment of first paragraph filed 4-17-2000 as an emergency; operative 4-17-2000 (Register 2000, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-15-2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 12-20-99 order transmitted to OAL 4-5-2000 and filed 5-15-2000 (Register 2000, No. 20).

8. Certificate of Compliance as to 4-17-2000 order, including further amendments, transmitted to OAL 8-11-2000 and filed 9-25-2000 (Register 2000, No. 39).

§ 4412.1. Training Costs Charged to Trainees

(a) Unless otherwise permitted herein, or with written approval from the Executive Director of the Panel, trainees being trained under a contract funded by the Panel cannot be charged for any training costs.

(1) If the contractor is receiving Panel funds based on a budget, that budget must accurately reflect all training costs to be paid by the Panel, the employer or by any other specified source. If books or other supplies are to be purchased by the students, they will have to be specifically and clearly identified as a funding source in the budget.

(2) A company cannot indicate an in-kind contribution for supplies or books, then require the trainees to purchase these items, since in-kind contributions are defined by this title as costs covered by the employer/contractor and not by a third party (i.e. the trainee).

(b) The Panel recognizes that there is an inherent risk factor in implementing a new hire training program. This risk cannot be transferred to the trainees enrolled in that program in any manner, whether by reimbursable fee or otherwise.

(c) If the Panel determines any charges have been made to students which are not authorized by the Panel or by statute, the Panel shall offset such monies from any reimbursement due to the contractor, or if monies have been paid to the contractor, the Panel shall seek reimbursement for such funds. Failure of the contractor to reimburse for these charges is sufficient reason for denying any future Panel funds to the contractor.

(d) Special Employment Training projects for small business skills are exempt from these provisions. (See Section 4409.)

REFERENCE:

Sections 10205(e) and 10206(a), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

2. Repealer of subsection (a)(1) and subsection renumbering filed 4-17-2000 as an emergency; operative 4-17-2000 (Register 2000, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-15-2000 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 4-17-2000 order transmitted to OAL 8-11-2000 and filed 9-25-2000 (Register 2000, No. 39).

4. Amendment of subsection (d) and Note filed 9-27-2005; operative 9-27-2005 pursuant to *Government Code section 11343.4* (Register 2005, No. 39).

§ 4412.2. Third Party Fees

REFERENCE:

Section 10206(a)(1)(D), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

2. Repealer filed 11-28-2006; operative 12-28-2006 (Register 2006, No. 48).

§ 4413. Subcontracts

(a) Contractors may enter into subcontracts for both training and administrative services with a third-party entity for training and/or administrative services, subject to review and approval by ETP.

(b) All subcontracts shall include:

(1) a provision that the Panel is not a party to the subcontract and is not obligated in any manner to either party for any liability that might arise from the delivery of services under the subcontract;

(2) a provision that ETP shall have the right during normal business hours, to examine or audit any and all records, books, papers and documents related to the conduct of the ETP-funded training project to the extent ETP believes necessary; and,

(3) a provision that ETP shall have the right during normal business hours to freely observe and monitor, without the presence of the subcontractor or Contractor, all performance under the subcontract, including interviews with trainees and employees.

(c) Contractors are entirely liable for ensuring that all subcontractors cooperate to the extent necessary to satisfy performance obligations under their contracts with the Panel.

(d) Subcontractors for administrative services must express the fees to be paid with ETP funds as a percentage of payment earned. (See Section 4400(r).) In general, the fees may not exceed thirteen percent (13%) of payment earned for administering a retraining project; or, twenty percent (20%) of payment earned for administering a new-hire training project Contract.

(e) A copy of any original subcontract(s) and amendment(s) thereto must be submitted to ETP, upon request. All subcontracts and amendments for administrative services must be in writing. A subcontract or contract amendment that is entered into for the sole purpose of providing training services need not be in writing, so long as the contractor sets forth the terms in a writing that is submitted to ETP, upon request.

REFERENCE:

Sections 10206(a), 10208, 10209(f), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Amendment of subsections (a), (b)(3) and (b)(4), new subsections (b)(5)-(b)(10), repealer and new subsections (c) and (d) and amendment of Note filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

3. Amendment of section and Note filed 11-28-2006; operative 12-28-2006 (Register 2006, No. 48).

§ 4414. Job Creation

REFERENCE:

Section 10200(a)(1), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-14-95; operative 4-14-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 15).

2. Amendment of subsection (a)(3) and amendment of Note filed 11-6-2001 as an emergency; operative 11-6-2001 (Register 2001, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-6-2002 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 11-6-2001 order transmitted to OAL 3-6-2002 and filed 4-16-2002 (Register 2002, No. 16).

4. Repealer filed 4-19-2006; operative 5-19-2006 (Register 2006, No. 16).

§ 4415. Management Training Cap

(a) Supervisors and managers may not exceed 40 percent of the total trainee population under a Single Employer Contract or Multiple Employer Contract.

(b) The Panel shall at its sole discretion, set the limitation on supervisor and manager trainees under a given training contract within a range of 20 to 40 percent. In setting this limitation, the Panel shall consider the purpose of training and other factors pertinent to the overall goals of this ETP program, on a case-by-case basis.

(c) For purposes of this limitation, supervisors and managers are workers who are exempt from payment of overtime compensation, consistent with the determination of exempt status contained in the definition of "frontline worker" at Section 4400(ee).

(d) This limitation may be waived for small businesses with 100 or fewer employees.

(e) This limitation does not apply to entrepreneurial training under Section 4409(c).

REFERENCE:

Sections 10200(a), 10205 and 10206, Unemployment Insurance Code.

HISTORY:

1. New section filed 4-14-95; operative 4-14-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 15).

2. Amendment of section and Note filed 9-27-2005; operative 9-27-2005 pursuant to *Government Code section 11343.4* (Register 2005, No. 39).

3. Repealer and new section heading and section and amendment of Note filed 10-23-2007; operative 11-22-2007 (Register 2007, No. 43).

§ 4416. Out-of-State Competition

(a) Funding Requirement. The Panel will not fund any retraining project, with the exception of Special Employment Training under *Unemployment Insurance Code Section 10214.5*, unless it first determines that the trainee jobs are threatened by out-of-state competition.

(b) Determination. The Panel will make its Determination regarding out-of-state competition on a case-by-case basis and at its sole discretion, based on the factors outlined in subsections (d)-(h). The only exception is for employers classified under the North American Industrial Classification System (NAICS) as set forth in subsection (i).

(c) Employer. As used in regard to a Determination under subsections (d)-(h), Employer means the employer's individual facility, functional group or unit that is or will be employing the trainees whose jobs are threatened by out-of-state competition.

(d) Threshold Analysis. As a threshold analysis, the Panel will consider whether the Employer:

(1) manufactures a product sold out-of-state; or

(2) manufactures a product sold in-state that competes with products manufactured out-of-state; and/or

(3) provides a service in California that regularly competes with service providers located out-of-state; and/or

(4) provides a service directly to out-of-state customers where revenues derived directly from this service comprise at least 25 percent of gross annual revenue.

(e) Significant Business Presence. If the threshold analysis is not sufficient to make a Determination, the Panel will also consider whether the Employer has a significant business presence outside California. This is a two-part analysis using the criteria set forth in both (1) and (2) below:

(1) The Employer, as defined in Section 4416(c) above, or its corporate headquarters, must provide internal support services to one or more offices, divisions, branches, stores, or franchises located out-of-state; and,

(2) The Employer must establish one of the following:

(A) at least 25 percent of the Employer's gross annual revenue is derived directly from its operations out-of-state, or

(B) at least 25 percent of the Employer's permanent offices, divisions, branches, stores or franchises are located out-of-state, or

(C) at least 25 percent of the Employer's permanent full-time employees work at locations out-of-state.

(f) Mortgage Banking. If the Threshold Analysis is not sufficient to make a Determination, the Panel will also consider whether the Employer is a mortgage banking institution. This is a three-part analysis using the criteria set forth in (1) through (3) below:

(1) The institution must be a mortgage lender, a business that services mortgage loans or a business that packages/sells mortgage loans; and

(2) The institution must conduct its business or support services in California; and

(3) All trainees must hold positions that are directly related to the lending, servicing, packaging/selling function.

(g) Destinations. If the Threshold Analysis is not sufficient to make a Determination, the Panel will also consider whether the Employer qualifies as a destination resort, a convention/conference hotel or a convention/conference center under the parameters set forth in (1) through (4) below:

(1) A destination resort must be a place people travel to in pursuit of recreation, where the destination is the resort itself and not the city or geographic region of its locale. In the alternative, a hotel may qualify as a destination resort if it operates in conjunction with or in proximity to a recreational attraction, where the hotel directly derives at least 25 percent of its gross annual revenue from out-of-state visitors.

(2) A convention/conference hotel must directly derive at least 25 percent of its gross annual revenue from transient lodging or related services provided to out-of-state visitors to a convention, conference or trade show.

(3) A convention/conference center must primarily provide for the meeting and exhibiting needs of out-of-state visitors to a convention, conference or trade show.

(4) To qualify as a destination resort, a convention/conference hotel, or a convention/conference center the Employer must also meet at least three of the following six criteria:

(A) Routinely advertises in the same media as its out-of-state competitors; or

(B) Routinely makes special sales efforts designed to attract out-of-state customers; or

(C) Participates in sales missions or trade shows conducted out-of-state; or

(D) Contributes financially to joint, community-based sales efforts conducted out-of-state; or

(E) Markets directly to out-of-state customers by mailing, telephone soliciting, internet advertising or other broad-based means; or

(F) Otherwise demonstrates that it is competing with similar resorts, hotels or centers located out-of-state.

(h) Call Center. If the Employer is a call center, the Panel will dispense with the Threshold Analysis at subsection (d). Neither will the NAICS classifications at subsection (i) apply, for the purpose of meeting the out-of-state competition requirement. Instead, the Panel will base its Determination on the criteria set forth in (1) through (5) below:

(1) At least 25 percent of annual call volume must originate from outside California; and,

(2) The center must be an internal operation; and,

(3) The center must be primarily engaged in taking customer orders or providing customer service by telephone; and,

(4) The customer must initiate contact by a call or other inquiry; and,

(5) The center must not be engaged in telemarketing.

As used herein "telemarketing" means a plan, program or campaign designated to sell goods or services by telephone solicitation, where the customer does not initiate contact.

(i) NAICS Industries. As an exception to the discretionary Determination process at subsections (d)-(h), any employer that finances liability for unemployment insurance benefits will be deemed to meet the out-of-state competition requirement based on industry classifications. The pertinent industries are classified into Sectors by the federal Office of Management and Budget under the 2002 North American Industrial Classification System (NAICS). The Employment Development Department (EDD) routinely assigns NAICS classifications to all businesses in California.

For the purpose of meeting the out-of-state competition requirement, the Panel will accept the EDD assignment of NAICS classifications for the Sectors identified in both (1) and (2) below:

(1) Any NAICS classification in:

Sectors 31-33. Manufacturing Industry

(2) Designated NAICS classifications in:

Sector 11. Agriculture, Forestry, Fishing & Hunting Industry

Sector 21. Mining Industry

Sector 51. Information Industry

Sector 54. Professional, Scientific & Technical Services Industry

(3) A detailed definition of each industry classification is set forth in the "NAICS Manual" published by the U.S. Census Bureau under the Office of Management and Budget. All of these classifications may be viewed online free of charge at www.census.gov. The particular classifications designated by the Panel in Sectors 11, 21, 51 and 54 are shown in the following chart:

NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM

Sector 11. Agriculture, Forestry, Fishing & Hunting Industry	
111	Crop Production
112	Animal Production
113	Forestry and Logging
114	Fishing, Hunting & Trapping
Sector 21. Mining	
211	Oil & Gas Extraction
212	Mining
Section 51. Information	
511	Publishing Industries (except Internet)
51211	Motion Picture and Video Production
512191	Teleproduction and Other Postproduction Services
Sector 54. Professional, Scientific and Technical Services	
541330	Engineering Services
54138	Testing Laboratories
541511	Custom Computer Programming Services
54152	Computer System Design Services
54171	Research & Development in the Physical, Engineering and Life Sciences

REFERENCE:

Sections 10200(a), 10200(b)(i) and 10201(b), Unemployment Insurance Code.

HISTORY:

1. New section filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

2. Amendment of section and Note filed 4-12-2006; operative 5-12-2006 (Register 2006, No. 15).

§ 4417. Secure Job

(a) The Panel shall fund training for employment that is stable. The employer's turnover rate shall not exceed 20% annually for the company facility where training is being requested. If the employer crosses this 20% threshold, the Panel may accept a higher turnover rate, but only if:

(1) the employer provides evidence that the proposed training will significantly decrease the turnover rate, or

(2) the employer has experienced a singular reduction in force or other occurrence which adversely affected the turnover rate in the last calendar year, or

(3) industry data supports a higher turnover rate.

(b) Even if the Panel accepts a higher turnover rate, it may impose a turnover penalty. Said penalty will be imposed if the employer exceeds a trigger rate to be determined by the Panel on a case-by-case basis as a condition of funding, taking into account the factors in subsection (a). The trigger rate will be applied to turnover as measured in the 12-month period preceding termination of the contract.

By way of penalty, the employer will not earn the final 25% payment which would otherwise be due under the agreement if all other terms are met. This penalty will be applied at the time of fiscal closeout for the training project as a whole.

(c) Turnover is calculated as follows:

(1) The number of full-time workers who separated from their jobs during the last calendar year divided by the average number of full-time workers employed during that same period of time at the same company site(s).

(2) The following types of employment separations shall be included in the number separating during the year:

(A) Quits but for "voluntary quits" determined ineligible for Unemployment Insurance (UI) benefits by the Employment Development Department (EDD)

(B) Layoffs of more than 30 days

(C) Discharges for cause

(D) Discharges without cause

(3) The following types of separation shall be excluded:

(A) Layoffs of 30 days or less

(B) Workers on strike

(C) Outside consultants and contractors

(D) Workers from temporary help agencies

(E) Seasonal Workers

(F) Deaths

(G) Transfers to another company facility

(H) Permanent separations due to disability

(I) Retirements

REFERENCE:

Section 10200(a)(3), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-14-95; operative 4-14-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 15).

2. Amendment of subsections (a), (a)(1), (a)(2)(G) and Note filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

3. Repealer of subsections (a)(2)(D) and (a)(2)(F)-(H), subsection relettering, new subsections (a)(3)(E)-(I) and amendment of Note filed 9-27-2005; operative 9-27-2005 pursuant to *Government Code section 11343.4* (Register 2005, No. 39).

4. Amendment filed 2-15-2011; operative 3-17-2011 (Register 2011, No. 7).

§ 4418. Wage Criteria

(a) The Panel shall establish wage requirements for the minimum hourly wage a trainee must earn at the end of the employment retention period (ETP Minimum Wage). The ETP Minimum Wage shall be based on statewide wage data for the previous fiscal year, provided by the Employment Development Department's Labor Market Information Division (LMID). The ETP Minimum Wage shall be established for each calendar year on a county-by-county basis. Furthermore, the Panel shall review the ETP Minimum Wage annually, and make revisions as needed based on LMID data.

(b) The Panel may use commission earnings to determine a trainee's hourly wage, if there is a reliable history of commission payment by the employer and if actual payment can be verified. As used herein, "commission" means a percentage or proportion of the sale price, for services rendered in the sale of goods or services, paid to employees whose principal job duty is sales.

(c) The panel may include bonuses in determining a trainee's hourly wage, if there is a reliable history of bonus payment by the employer and if actual payment can be verified. As used herein, "bonus" means compensation paid in addition to salary, hourly wage, or commission. Bonuses are payable in addition to any other compensation, and are normally paid to reward extraordinary work or induce continued employment.

(d) The Panel may include mandatory service charges paid to a trainee, in determining his or her hourly wage, if actual payment can be verified. As used herein, "mandatory service charges" means a non-voluntary surcharge for service that is:

(1) imposed on the patron of a business, and

(2) added to the amount due for goods, food, drink or articles sold to the patron, and

(3) taxable to the employer as a portion of gross receipts, and

(4) payable to the trainee in its entirety, or payable as a fixed percentage that is subject to prior approval by the Panel.

(e) The Panel may include the dollar amount of health benefits paid to a trainee in determining his or her hourly wage. As used herein, "health benefits" means payments made by the employer toward the cost of medical, dental or vision care insurance. These employer payments may be made as follows:

(1) full or partial premium payments to a health insurance plan regardless of whether the plan is sponsored by the employer, or

(2) contributions to a cafeteria plan administered under *Internal Revenue Code Section 125* for the reimbursement of medical costs.

In every instance, these employer payments must be reliable and verifiable before they may be included in the hourly wage determination.

REFERENCE:

Sections 926, 10200(a)(4), 10201(f) and 10205(e), Unemployment Insurance Code; and *Sections 200, 204.1 and 350, Labor Code*.

HISTORY:

1. New section filed 4-14-95; operative 4-14-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 15).
2. Repealer and new section and amendment of Note filed 9-2-2005; operative 10-2-2005 (Register 2005, No. 35).

§ 4419. Health Benefits

REFERENCE:

Section 10201(g), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-14-95; operative 4-14-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 15).

2. Repealer filed 9-2-2005; operative 10-2-2005 (Register 2005, No. 35).

§ 4420. Literacy Training

In no event shall basic and literacy skills training hours funded by the Panel exceed 45% of the total training hours per trainee, except for projects funded as special employment training for frontline workers with multiple barriers to full participation in the labor force, welfare to work trainees, and working poor trainees in high unemployment areas of the State.

REFERENCE:

Section 10201.5, 10209(a), 10214.5 and 10214.7, Unemployment Insurance Code.

HISTORY:

1. New section filed 4-14-95; operative 4-14-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 15).

2. Amendment filed 12-1-95; operative 12-1-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 48).

3. Amendment of section and Note filed 1-8-2001 as an emergency; operative 1-8-2001 (Register 2001, No. 2). A Certificate of Compliance must be transmitted to OAL by 5-8-2001 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 1-8-2001 order transmitted to OAL 5-8-2001 and filed 6-20-2001 (Register 2001, No. 25).

5. Amendment filed 1-27-2010; operative 2-26-2010 (Register 2010, No. 5).

§ 4420.5. Safety Training

(a) The Panel shall not fund general training required by the state or federal Occupational Safety and Health Administration (Cal-OSHA or OSHA) for the operation of a business in California. (See General Industry Safety Orders at Title 8, California Code of Regulations Chapter 3.2).

(b) In addition, the Panel shall not fund any other general safety training such as injury and illness prevention, emergency action, evacuation, fire prevention plans, and access to first aid.

(c) The Panel may fund special safety training that is directly related to a piece of equipment or process recently acquired, or that an employee is not familiar with. However, this training cannot exceed 10% of the total training hours per trainee, except with prior written approval upon a showing of good cause.

(d) some occupations, by the very nature of the work, require intensive skills training in safety procedures. For example, a training curriculum for workers engaged in environmental clean-up and oil/gas extraction might include a concentration of safety procedures. This type of safety training is not subject to the restrictions herein.

REFERENCE:

Section 10205(d), Unemployment Insurance Code.

HISTORY:

1. New section filed 5-18-98; operative 5-18-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 21).

2. Editorial correction of Note (Register 98, No. 25).

3. Amendment filed 1-27-2010; operative 2-26-2010 (Register 2010, No. 5).

§ 4421. Out-of-State Vendors

(a) Except as otherwise provided, the Panel shall not reimburse an employer or contractor for any costs associated with an out-of-state vendor, either through a budget or the Fixed Fee Rate Table, if those costs are for services, such as training.

(1) For purposes of this section, an out-of-state vendor is defined as an entity which has not maintained an office in California with one or more California employees for more than six months prior to the start date of the Panel contract.

(2) If an out-of-state vendor meets the definition in paragraph (1), costs attributable to the California office and California employee(s) shall be reimbursable.

The Panel may authorize reimbursement for the cost of services provided by an out-of-state vendor which does not have a California office and employees only if the Panel finds that such services are unique to the need of the employer or contractor and are unavailable in California.

REFERENCE:

Section 10206(a), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-1-95; operative 12-1-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 48).

§ 4422. Orientation Modules

The Panel shall not reimburse an employer or contractor for training components designed to orient new or current employees to the policies or philosophy of either the employer(s), or of the Panel.

REFERENCE:

Section 10209(a), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-1-95; operative 12-1-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 48).

§ 4423. Double Enrollment

REFERENCE:

Sections 10201(b) and 10209(f), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-1-95; operative 12-1-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 48).

2. Amendment of subsections (a) and (b) and amendment of Note filed 11-26-97; operative 11-26-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 48).

3. Repealer filed 7-7-98; operative 7-7-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 28).

§ 4424. Total Quality Management

REFERENCE:

Sections 10200(a), (b)(3) and 10201(b)(3), Unemployment Insurance Code.

HISTORY:

1. New section filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

2. Repealer filed 5-18-98; operative 5-18-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 21).

§ 4425. Structured On-Site Training

REFERENCE:

Section 10201(i), (j) and 10209(b), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-1-95; operative 12-1-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 48).

2. Repealer filed 3-12-2007; operative 4-11-2007 (Register 2007, No. 11).

§ 4426. Training Agency Projects

(a) For purposes of funding contracts with a training agency as defined in Section 4400(z), the Panel may contract with the following public and private educational entities:

(1) a public community college;

(2) a public or private university;

(3) a California Sate University auxiliary organization (*Ed. Code Section 89900* et seq.);

(4) a public adult school;

(5) a public high school;

(6) a public Regional Occupational Program (ROP); or

(7) a private post-secondary vocational school.

The public entities must be certified by the Department of Education or a third-party organization such as the Western Association of Schools and Colleges (WASC), as appropriate. The private schools must be approved or certified by an independent third party whose review standards are satisfactory to the Panel as determined case-by-case.

(b) A training agency may function as either the contract administrator, training provider, or both.

REFERENCE:

Section 10201(f), 10206(a), 10208 and 10210, Unemployment Insurance Code; and Sections 94302(h) and (k), Education Code.

HISTORY:

1. New section filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).
2. Amendment filed 1-27-2010; operative 2-26-2010 (Register 2010, No. 5).

§ 4427. Temporary Agency

(a) The Panel may fund training for employees of a "temporary services agency" or "leasing agency" within the meaning of Unemployment Insurance Code Section 606.5 (Agency), as set forth herein.

(b) Agencies employ both permanent and temporary workers. The permanent worker performs administrative duties, usually on the premises of the Agency (Permanent Worker). The temporary worker provides services for the Agency's clients, ranging from clerical to professional, usually on the premises of the client (Temporary Worker).

(c) Employment retention for purposes of a Panel contract will be permitted with Agencies only in the following circumstances:

(1) As Permanent Workers under a single employer contract, if the Agency is otherwise eligible.

(2) As Temporary Workers under a Multiple Employer Contract.

(d) In addition, new-hire placements as a Temporary Worker shall be no more than 20% of the total new hire trainee population. This cap will be applied by ETP to the number of trainees who have completed training and retention and reached the applicable Minimum Wage, at the time of fiscal closeout for the training project as a whole. The panel may modify this 20% cap on a case-by-case basis for good cause shown.

(e) On a case-by-case basis, Temporary Workers may be trained so long as they are hired by a single employer under a single-employer contract, or by a participating employer under a multiple-employer contract, for purposes of full-time retention and related requirements. The Panel may approve this type of "temporary to permanent" hiring model based on the extent to which the training is designed to further overall goals and objectives of the ETP program.

REFERENCE:

Section 10201(b), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

2. Amendment of section heading, section and Note filed 9-5-2007; operative 10-5-2007 (Register 2007, No. 36).

3. Amendment filed 2-15-2011; operative 3-17-2011 (Register 2011, No. 7).

§ 4428. Welfare to Work Projects

REFERENCE:

Section 10214.7, Unemployment Insurance Code.

HISTORY:

1. New section filed 11-10-97 as an emergency; operative 1-1-98 (Register 97, No. 46). A Certificate of Compliance must be transmitted to OAL by 5-1-98 or emergency language will be repealed by operation of law on the following day.

2. Editorial correction of subsections (b)(1) and (c) (Register 98, No. 24).

3. Certificate of Compliance as to 11-10-97 order, including repealer of subsection (d), transmitted to OAL 5-1-98 and filed 6-11-98 (Register 98, No. 24).

4. Editorial correction of subsection (c)(5) (Register 99, No. 19).

5. Amendment of subsection (b)(3), new subsection (b)(4), amendment of subsection (c)(1), repealer of subsection (c)(6), subsection renumbering, and new subsection (d) filed 5-7-99 as an emergency; operative 5-7-99 (Register 99, No. 19). A Certificate of Compliance must be transmitted to OAL by 9-7-99 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 5-7-99 order transmitted to OAL 8-31-99 and filed 10-14-99 (Register 99, No. 42).

7. Repealer filed 10-24-2006; operative 11-23-2006 (Register 2006, No. 43).

§ 4429. High Unemployment Areas

(a) The Panel may apply special funding criteria to High Unemployment Area (HUA) training projects. To qualify for this type of funding, the employer or participating employer must be located in the HUA. The trainees in a HUA must earn at least the ETP Minimum Wage and complete the standard retention period except as identified in subsections (c) and (d) below.

(b) An HUA may be a county or portion of a county, or some other distinct region. To be designated as an HUA, the region must have an unemployment rate (Regional Rate) exceeding the state average rate (Benchmark Rate).

When the Benchmark Rate is less than 10%, the Regional Rate must be higher by a differential of at least 25%. When the Benchmark Rate is at or higher than 10%, the Regional Rate must be higher by a differential of at least 15%.

(c) The Panel may also adjust the differential between Benchmark Rate and Regional Rate on a case-by-case basis for good cause shown. Good cause may include the longevity of unemployment in the region, and whether unemployment has had a particularly adverse effect on the industry sector or occupation being considered for training funds.

(d) The Benchmark Rate and Regional Rate will be based on the unemployment rates set by the Labor Market Information Division (LMID) of the Employment Development Department. In determining HUA status, the Panel will abide by the Benchmark Rate set by LMID. The Panel will also abide by the Regional Rate listing posted on its website at www.etp.ca.gov or the most recent information published by LMID on its website at www.edd.ca.gov. In so doing, the Panel will follow the Benchmark Rate(s) and Regional Rate(s) that favor designation as an HUA as updated by LMID.

(e) For HUA projects, the Panel may reduce the ETP Minimum Wage requirement at Section 10201(f) of the Unemployment Insurance Code by up to 25 percent, on a case-by-case basis. Retraining projects will only qualify for this reduction if post-retention wages exceed pre-retention wages. This reduction shall not apply to wages governed by a collective bargaining agreement. A new-hire project will qualify for the 25-percent reduction, without regard to a wage differential, for post-retention wages.

(f) For HUA projects, the Panel may modify the retention period at Section 10209(f) of the Unemployment Insurance Code (See Section 4400(h).) For these projects, the Panel may choose to make a special modification, and designate a retention period of a minimum of 90 out of 120 consecutive days with up to three employers pursuant to Section 10214.5(c) of the Unemployment Insurance Code. Any retention modification shall be made on a case-by-case basis.

(g) The Panel may make additional waivers for trainees in a HUA project who qualify as "working poor" under Section 4400(hh), on a per-trainee basis. In particular, the Panel may waive the limitations under Section 4420 and fund the same number of basic skills and literacy training hours as are funded for vocational skills training, on a per-trainee basis.

REFERENCE:

Sections 10201.5 and 10214.5, Unemployment Insurance Code.

HISTORY:

1. New section filed 5-17-2006; operative 6-16-2006 (Register 2006, No. 20).

2. Amendment of section and Note filed 2-15-2011; operative 3-17-2011 (Register 2011, No. 7).

§ 4430. (Reserved)

§ 4431. Public Records

REFERENCE:

Section 10205(k), Unemployment Insurance Code.

HISTORY:

1. New section filed 8-19-91; operative 8-19-91 (Register 92, No. 1).

2. Repealer filed 8-9-2006; operative 9-8-2006 (Register 2006, No. 32).

§ 4432. Incompatibility

REFERENCE:

The People ex. rel. Chapman v. Rapsey (1940) 16 Cal.2d 636.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Repealer filed 7-18-2007; operative 8-17-2007 (Register 2007, No. 29).

§ 4433. (Reserved)

§ 4440.1. Advances. [Repealed]

REFERENCE:

Section 10206(a), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Amendment of subsections (c), (g) and Note filed 12-1-95; operative 12-1-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 48).

3. Repealer filed 10-23-2007; operative 11-22-2007 (Register 2007, No. 43).

§ 4440.2. Progress Payments

(a) Progress payments may be negotiated and authorized during the course of operation to assist in off setting the costs incurred in the delivery of the training plan. Progress payments shall not be authorized for more than 75 percent of the cost per trainee. Twenty-five percent shall be withheld until the trainee has been retained in employment for the specified employment-retention period following training.

(b) When permitted by the Panel, progress payments shall be specified in the payment schedule of the contract and shall be authorized no more than once per month.

(c) Progress payments shall be made as specified in the Agreement when accompanied by an invoice and the appropriate documentation substantiating the completion of the performance requirements.

(d) Progress payments and the final payment may be suspended at the sole discretion of the Employment Training Panel if the Panel finds that the contractor is out of compliance with the terms and conditions of the Agreement. The Contractor shall be given written notice for the reason for the suspension of payment. The contractor must correct any deficiency which was the reason for the suspension of payment before the suspension of payment of funds will be revoked.

REFERENCE:

Section 10209(f), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Repealer of subsections (c)-(d) and subsection relettering filed 12-1-95; operative 12-1-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 48).

3. Amendment of subsection (b), new subsection (d) and amendment of Note filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

§ 4440.3. Term Date and Start of Training

(a) The term of an ETP Agreement cannot begin prior to the date of Panel approval.

(b) The Contractor shall not be reimbursed for the cost of training that starts prior to the term of the ETP Agreement. If the Contractor starts training before the ETP Agreement has been signed by both parties, it must nevertheless adhere to the terms and conditions set forth in the proposed ETP Agreement along with any terms or conditions imposed by the Panel and agreed to by the Contractor's representative at the time of Panel approval.

REFERENCE:

Section 10209(c), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-1-95; operative 12-1-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 48).

2. Amendment of section and Note filed 5-18-98; operative 5-18-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 21).

3. Amendment of section heading, section and Note filed 6-28-2006; operative 7-28-2006 (Register 2006, No. 26).

§ 4441. Retraining Certification

REFERENCE:

Sections 10200, 10201(b)(2)(A), 10201(g), 10205(e) and 10214.5(a), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Amendment of section heading, section and Note filed 4-14-95; operative 4-14-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 15).

3. Repealer and new section and amendment of Note filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

4. Repealer filed 7-18-2007; operative 8-17-2007 (Register 2007, No. 29).

§ 4441.5. Training Schedule

REFERENCE:

Section 10205(c), Unemployment Insurance Code.

HISTORY:

1. New section filed 5-18-98; operative 5-18-98 pursuant to *Government Code section 11343.4(d)* (Register 98, No. 21).

2. Repealer filed 3-12-2007; operative 4-11-2007 (Register 2007, No. 11).

§ 4442. Record Keeping

(a) Contractors shall maintain and make available:

(1) records that clearly document all aspects of training and retention related to the training program;

(2) applicable financial records which document funds received and disbursed, and

(3) payroll and personnel records related to the ETP training agreement.

(b) All classroom/laboratory training and videoconference training records shall be maintained by job number and shall contain the following elements:

(1) Date(s) training occurred

(2) Type of training and course title - as identified in the approved curriculum

(3) Number of hours trainee was in attendance per day of training - excluding meal breaks

(4) Trainer(s) name(s) - typed or clearly printed

(5) Trainer's signature - name signed once for each type of training

(6) Trainee(s) name(s) - typed or clearly printed

(7) Trainees' signatures - name signed on the first day of training for each type of training

(8) Trainee's initials - on first day of training and each subsequent day of training for each type of training

(c) All computer-based training records shall be maintained by job number and shall contain the following elements:

(1) Date system was last accessed for a specific course

(2) Type of training and course title - as identified in the approved curriculum

(3) Number of hours designated to complete a course

(4) Percentage of course completed

(5) Trainee name - type or clearly printed

(6) Trainee's signature verifying course was completed

(7) Signature of an authorized employer representative, verifying trainee competency attainment in the specified course at completion of the course.

(d) Contractors shall collect and maintain Structured, On-Site Training (SOST) records by job number and type of training (as identified in the contract Training Plan) that contain the following elements:

(1) Date(s) training was provided

(2) Trainer's name - typed or clearly printed

(3) Trainees' names - typed or clearly printed

(4) Trainer's time - completed daily (in increments of not less than 5 minutes).

(5) Type of training

(6) Trainer's activities as provided in *22 CCR 4400(y)*.

(7) Trainer's signature and date at completion of SOST by type of training

(e) For SOST, Contractor shall maintain a list of trainees who have achieved competency. This list must be organized by job number, include the type of training and date of competency attainment, and be signed and dated by the trainer(s) and supervisor(s).

(f) For purposes of items (b), (c) and (d) above, contractor developed documentation forms shall be provided to ETP for approval prior to implementation.

(g) All records identified in paragraphs (a) through (e) above shall be retained for no less than four years from the termination date of the agreement or three years after final payment under the agreement, whichever is later.

(1) If the agreement is partially or completely terminated, the records relating to the performance prior to termination shall be preserved and made available to ETP for a period of three (3) years from the date of any resulting final settlement.

(2) Records which relate to litigation or the settlement of claims arising out of the performance of the agreement, or reimbursable costs and expenses of the agreement as to which exception has been taken by ETP or any of its duly authorized representatives, shall be retained by contractor for a period of 3 years after the final dispositions of such appeals, audits, claims, exceptions, or litigation.

(h) All records will be retained within the control of the primary contractor and shall be made available for review at the contractor's place of business, within the State of California.

(i) At the completion of the Agreement, all records identified in item (a)(1) above, whether of the contractor or subcontractor(s), and all records identified in (a)(2) and (a)(3) shall be retained by the primary con-tractor and be made available for review at the contractor's place of business within the state of California.

(j) All records shall be open to inspection and shall be subject to being copied by any ETP-authorized representative at any time during the normal, business hours of the contractor.

(k) In the absence of records or supporting documentation necessary to substantiate performance under the contract the contractor may be required to return ETP funds, plus interest.

REFERENCE:

Section 10205(f), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Amendment of subsection (a), repealer and new subsections (a)(1) and (a)(2), new subsection (a)(3), repealer and new subsections (b)-(d), new subsections (e)-(j) and amendment of Note filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

3. Amendment of section heading and subsection (e) and repealer of subsection (e)(1) and (e)(2) designator filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

4. Amendment filed 12-20-99 as an emergency; operative 12-20-99 (Register 99, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-18-2000 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 12-20-99 order transmitted to OAL 4-5-2000 and filed 5-15-2000 (Register 2000, No. 20).

§ 4442.1. Make-up Training

REFERENCE:

Section 10200(a), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

2. Repealer filed 9-2-2005; operative 10-2-2005 (Register 2005, No. 35).

§ 4442.2. Record Keeping Modifications

The Panel may modify the record keeping requirements of *22 CCR Sections 4442* and *4442.1* if necessitated by the contractor's current, established record keeping practices, provided that the modified record keeping practices will properly substantiate the delivery of training, placement and retention as required in the agreement, and the modified record keeping practices can be audited by the Panel. Any such record keeping modifications agreed to by ETP and Contractor shall be incorporated into the agreement.

REFERENCE:

Section 10205(f), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-20-99 as an emergency; operative 12-20-99 (Register 99, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-18-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 12-20-99 order transmitted to OAL 4-5-2000 and filed 5-15-2000 (Register 2000, No. 20).

§ 4443. Monitoring

(a) Panel staff shall schedule periodic on-site visits to the contractor's place of business or the location of the training program funded by the panel for the purpose of reviewing training activities for compliance with the specifications outlined in the agreement. During the visit, the monitor shall do any or all of the following:

(1) review the number of trainees entering, progressing through, or completing training and/or the retention period;

(2) for new hire training programs, determine if appropriate placement services are being provided to successful training completers as required by the contract;

(3) review the training schedule;

(4) review the curricula;

(5) observe classroom, laboratory, and/or structured, on-site training in session;

(6) assure that budgeted and required training staff, equipment, supplies and materials are available;

(7) interview trainers and trainees;

(8) review record keeping and daily documentation of training;

(9) review invoices;

(10) review subagreements and determine if all specified services are being delivered as provided for in the contract; and

(11) determine if the agreement and any subsequent amendments have been executed by the state.

(b) The results of the visit shall be documented in a report covering all areas reviewed, and include an assessment whether the training is meeting the Agreement specifications. If the program is out of compliance, recommendations for adjustments shall be made. Corrective action must be effected by the contractor as specified in the report. A copy of the report shall be provided to the Contractor.

REFERENCE:

Section 10205(f), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

§ 4444. Project Review

REFERENCE:

Section 10205(f), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Repealer filed 9-2-2005; operative 10-2-2005 (Register 2005, No. 35).

§ 4445. Contract Performance and Amendments

(a) Contractors cannot earn payment within the meaning of Section 4400(r) until the effective date of the contract.

(b) The Panel shall not approve contract amendments after the term has ended.

(c) The Panel will consider a contractor's prior and ongoing performance on any prior contract(s) when considering whether to approve a new contract, or the amendment of an existing contract. The Panel will review performance using the following non-inclusive criteria:

(1) Percentage of encumbered funds earned by contractor;

(2) Percentage of trainees retained in employment;

(3) Percentage of trainees enrolled under contract;

(d) For purposes of this section "encumbered" means funds set aside for payments to be made by ETP in a given fiscal year from the approved amount of funding.

REFERENCE:

Sections 10205(c), (e), 10206 and 10209(a), (d), Unemployment Insurance Code.

HISTORY:

1. New section filed 8-19-91; operative 8-19-91 (Register 92, No. 1).

2. New section heading, repealer of subsection (b) and subsection relettering, amendment of newly designated subsection (b), new subsections (c)-(c)(3) and amendment of Note filed 7-19-96; operative 7-19-96 pursuant to *Government Code section 11343.4(d)* (Register 96, No. 29).

3. Amendment of section and Note filed 11-28-2006; operative 12-28-2006 (Register 2006, No. 48).

§ 4445.1. Termination Procedures

REFERENCE:

Sections 10206(a) and 10209(f), Unemployment Insurance Code.

HISTORY:

1. New section filed 12-4-97; operative 12-4-97 pursuant to *Government Code section 11343.4(d)* (Register 97, No. 49).

2. Repealer filed 11-28-2006; operative 12-28-2006 (Register 2006, No. 48).

§ 4446. Disencumbering Unearned Funds

REFERENCE:

Section 10205(k), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Repealer filed 11-28-2006; operative 12-28-2006 (Register 2006, No. 48).

§ 4446.5. Contractor Relocation

(a) A single-employer contractor (Contractor) that moves a facility at which training was provided to a location out-of-state, within the term of the Employment Training Panel Agreement and up to three years from its termination, may be required to return payment earned under the Agreement.

(b) A Contractor that transfers jobs for which training was provided to a location out-of-state, within the term of the Employment Training Panel Agreement and up to three years from its termination, may be required to return payment earned under the Agreement.

(c) A Contractor that ceases business operations at a facility at which training was provided, within the term of the Employment Training Panel Agreement and up to three years from its termination, may be required to return payment earned under the Agreement.

(d) The requirement to return payment earned under this regulation may be imposed by the Panel at its discretion, on a case-by-case basis.

(e) In exercising its discretion the Panel shall consider, as mitigating factors, whether the Contractor made efforts to minimize the State's loss of jobs/skills, or to reduce the financial burden on affected employees. Examples of such efforts include, but are not limited to:

(1) offering job transfers to another facility operating in California,

(2) providing job-search and placement assistance,

(3) providing transitional health benefits, severance pay or incentives for early retirement.

(f) The provisions in subsections (a)-(e) above shall extend to a participating employer under a Multiple Employer Contract (MEC) for training that occurred on or after the date the participating employer knew or should have known that the facility would be moved or job(s) transferred to a location out-of-state or the facility would cease business operations. At the Panel's discretion, the MEC contractor may be reimbursed pro rata for its administrative costs related to said training.

REFERENCE:

Sections 10200(a)(1) and 10200(b)(4), Unemployment Insurance Code.

HISTORY:

1. New section filed 9-27-2005; operative 9-27-2005 pursuant to *Government Code section 11343.4* (Register 2005, No. 39).

2. Amendment of section and Note filed 4-5-2010; operative 5-5-2010 (Register 2010, No. 15).

§ 4447. Unearned Payments

All unearned payments shall be returned to the panel no later than 75 days after the termination date of the contract with interest calculated at the adjusted annual rate pursuant to section 19521, Revenue and Taxation Code.
Said interest shall be payable on all funds returned to the Panel under the provisions of this section from the first day of the month following the date they were received from the panel. This includes interest on unearned payments resulting from fiscal closeout and audit.

REFERENCE:

Section 10205(k), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Amendment of section heading, section and Note filed 2-15-2011; operative 3-17-2011 (Register 2011, No. 7).

§ 4448. Audits

(a) To ensure the provision of adequate fiscal and accounting controls, the Panel shall conduct annual performance-based audits of a selected sample of training projects funded by the Panel in any fiscal year. The auditor shall have sole discretion in selecting the sample and the criteria for selection may vary from one fiscal year to another.

(1) These audits shall be designed to provide reasonable assurance that the performance objectives of the training contract have been met. The auditor will test records, documents and other evidence that would support the final training cost reimbursement under the contract. At a minimum, the auditor will test for compliance with the following performance objectives: certification of eligibility, enrollment, completed class or lab presentation, training attendance, job placement and retention at the minimum wage specified in the contract.

(2) These audits shall be performed in accordance with the generally accepted government auditing standards that apply to professional judgment of auditors and performance audits set forth in the Government Auditing Standards, 2003 Revision (GAGAS). This publication is issued by the General Accounting Office, and may be viewed free of charge at www.gao.gov and is hereby incorporated by reference.

(3) A peer review of Panel audits should be conducted at least every three years by an independent third party, such as the Bureau of State Audits.

(b) The auditor may use statistical sampling in selecting the items being audited to extrapolate a probable error rate in a performance-based audit. In particular, statistical sampling and extrapolation will be used when there is good cause to believe that a significant overpayment has occurred, in the professional judgment of the auditor.

(1) The auditor may also use non-statistical sampling in a given audit. However, the results of non-statistical sampling will not be extrapolated since the sample results would not necessarily be representative of the audit population.

(2) The auditor will determine the statistical sampling methodology and the statistically valid sample size based on professional judgment. The methodology may vary between fiscal years and audits.

(c) When a probable overpayment is determined by statistical sampling and extrapolation, the final audit report shall include the following:

(1) The statistical sampling methodology;

(2) The sample size;

(3) The population from which the sample was drawn;

(4) The calculations used to extrapolate the overpayment; and,

(5) The confidence level used to set the precision of the extrapolation.

(d) When a probable overpayment is determined by statistical sampling and extrapolation, the contractor shall be provided an opportunity to refute the audit findings. Any decision to modify the probable overpayment or not shall be made at the sole discretion of the Panel, based on the professional judgment of the auditor.

(e) The Panel may conduct desk audits of selected training projects for a given fiscal year. Its criteria for selection may vary from one fiscal year to another. These audits are not required to be performed in accordance with GAGAS due to the limited scope of the audit work.

REFERENCE:
Section 10205(g), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

2. Amendment of section and Note filed 1-20-2006; operative 2-19-2006 (Register 2006, No. 3).

§ 4449. Collection Procedures

(a) Overpayment. Reconciliation and audit unit staff of the panel shall notify the contractor by demand letter that an overpayment exists, and such notification shall include the panel contractor billing. The demand letter shall be sent by certified mail, return receipt requested, and request payment in full within 30 days of date of mailing of the letter. If payment is not received within 30 days, a second notice of overpayment shall be sent to the contractor requesting payment in full within five days. If payment is not received within five days, panel staff shall prepare a final notice requesting payment within five days.

(b) Nonpayment. If payment is not received within five days of the final notice and no appeal is filed to extend the appeal period, the matter shall be referred to the panel's general counsel for action.

(c) Overdue accounts; installment payments.

(1) The panel may authorize liquidation of a debt by use of installment payments when necessary. Panel acceptance of an installment proposal shall be restricted to cases of unusual circumstances.

(2) Such proposals shall provide a payment schedule that will liquidate the liability at the earliest possible time. The debtor shall show the reason for an installment plan and its financial ability to remain solvent during the pay-back period. The panel may require an audited financial statement from the contractor.

(3) The panel may require a judgment and lien for each installment proposal approved by the panel.

(4) The panel may consider other methods of liquidating the account as approved by the appropriate state agency (i.e., the Attorney General).

REFERENCE:

Section 10205(k), Unemployment Insurance Code.

HISTORY:

1. New section filed 4-12-91; operative 4-12-91 pursuant to *Government Code section 11346.2(d)* (Register 91, No. 18).

§ 4450. Appeal Process

(a) An interested person may appeal any final adverse decision made on behalf of the Panel where said decision is communicated in writing. Appeals must be submitted in writing to the Executive Director at the Employment Training Panel in Sacramento.

(b) There are two levels of appeal before the Panel. The first level must be exhausted before proceeding to the second.

(1) The first level of appeal is to the Executive Director, and must be submitted within 30 days of receipt of the final adverse decision. This appeal will not be accepted by the Executive Director unless it includes a statement setting forth the issues and facts in dispute. Any documents or other writings that support the appeal should be forwarded with this statement. The Executive Director will issue a written determination within 60 days of receiving said appeal.

(2) The second level of appeal is to the Panel, and must be submitted within 10 days of receipt of the Executive Director's determination. This appeal should include a statement setting forth the appellant's argument as to why that determination should be reversed by the Panel, and forwarding any supporting documents or other writings that were not provided at the first level of appeal to the Executive Director. If the Panel accepts the appeal and chooses to conduct a hearing, it may accept sworn witness testimony on the record.

(A) The Panel must take one of the following actions within 45 days of receipt of a second-level appeal:

(1) Refuse to hear the matter, giving the appellant written reasons for the denial; or

(2) Conduct a hearing on a regularly-scheduled meeting date; or

(3) Delegate the authority to conduct a hearing to a subcommittee of one or more Panel members, or to an Administrative Law Judge with the Office of Administrative Hearings.

(B) The Panel or its designee may take action to adopt any of the administrative adjudication provisions of the Administrative Procedures Act at *Government Code Section 11370* et seq., for the purpose of formulating and issuing its decision. Said action may take place at the hearing, or in preliminary proceedings.

(C) Upon completion of the hearing, the record will be closed and the Panel will issue a final ruling. The ruling may be based on a recommendation from the hearing designee. The ruling shall be issued in a writing served simultaneously on the appellant and ETP, within 60 days of the record closure.

(c) The time limits specified above may be adjusted or extended by the Executive Director or the Panel Chairman for good cause, pertinent to the level of appeal.

(d) Following receipt of the Panel's ruling, the appellant may petition for judicial review in Superior Court pursuant to *Code of Civil Procedure Section 1094.5*. This petition must be filed within 60 days from receipt of the Panel's ruling.

REFERENCE:

Section 10205(k) and 10207, Unemployment Insurance Code.

HISTORY:

1. New section filed 4-14-95; operative 4-14-95 pursuant to *Government Code section 11343.4(d)* (Register 95, No. 15).

2. Amendment of section and Note filed 11-28-2006; operative 12-28-2006 (Register 2006, No. 48).

§ 4451. Alternative Funding Source

(a) The Panel may allocate available funds from a source other than the Employment Training Tax for an Alternative Funding Source training program, consistent with the program goals of the source and the best judgment of the Panel.

(b) The Panel will follow the definitions and program requirements set forth in Title 22, California Code of Regulations Section 4400 *et seq.* as may be applicable to an Alternative Funding Source training program, consistent with subsection (a).

(c) The Panel will follow the performance standards set forth in Section 10200 et seq. of the Unemployment Insurance Code for an Alternative Funding Source training program, except the Panel may modify said standards on a case-by-case basis consistent with subsection (a).

(d) The Panel shall issue guidelines for each Alternative Funding Source training program to reflect possible modifications from core program requirements, consistent with subsections (a) through (c).

(e) It is the Panel's intent that each Alternative Funding Source project result in new or upgraded skills for incumbent-worker trainees and in full-time employment for all new-hire trainees.

(f) The Panel will identify industries and occupations that are priorities for funding under an Alternative Funding Source program, in its annual Strategic Plan.

REFERENCE:

Sections 10200, 10205 and 10214.6, Unemployment Insurance Code.

HISTORY:

1. New section filed 2-15-2011; operative 3-17-2011 (Register 2011, No. 7).

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