



**Employment Training Panel**  
STATE OF CALIFORNIA EMPLOYMENT TRAINING PANEL  
POLICY COMMITTEE MEETING  
In person  
1100 J Street, Sacramento, CA, Sequoia Room  
**Tuesday, August 08, 2023**

**I. POLICY COMMITTEE MEETING CALL TO ORDER**

Chair Gretchen Newsom called the meeting to order at 1:10 p.m.

**II. ROLL CALL**

Present

Gretchen Newsom  
Rick Smiles  
Rebecca Bettencourt

Executive Staff

Erich Shiners, Acting Executive Director  
Jaime Gutierrez, Chief Deputy Director

ETP Representatives

Elisabeth Testa, Policy Manager

**III. MEETING AGENDA**

No changes to August 8, 2023 Agenda.

ACTION: Mr. Smiles moved and Ms. Bettencourt seconded approval of the August 8, 2023 Meeting Agenda with no changes. All Policy Committee Members present voted in the affirmative.

Motion carried, 3 to 0.

**IV. MEETING MINUTES**

No changes to April 18, 2023 Meeting Minutes.

ACTION: Mr. Smiles moved and Ms. Bettencourt seconded approval of the April 18, 2022 Meeting Minutes with no changes. All Policy Committee Members present voted in the affirmative.

Motion carried, 3 to 0.

## **V. DISCUSSION ITEMS**

### **Out of State training vendors**

The question arose at our July Panel meeting regarding out-of-state training vendors. ETP Regulation 4421 requires that ETP-funded training be provided by vendors located in California, with one narrow exception in instances where particular training is unique to the contractor or employer and is unavailable from a California vendor. In this case the contractor is required to justify why that training is unique to them and that there is no training available within California. ETP has not been enforcing this requirement since June 2018 when the requirement to justify was suspended. Chief Counsel has determined that ETP needs to return to requiring justification for use of out-of-state training vendors. This will give Panel the opportunity to consider this when a proposal is presented and we can discuss today any possible amendments to the existing regulation.

What should the timeline be to return to requiring the justification? We need to realize that our system will need to be programmed to collect the information, staff will need to be trained on the process, and stakeholders will need to be given notice of the return to the need for justification information. In a meeting with staff it was suggested that January 1<sup>st</sup>, 2024, would allow staff to do the work needed to prepare to collect the information from applicants and put into the proposals. The programming change in Cal-E-Force is a fairly quick and simple undertaking, although we do not have a timeline on the training aspect of that.

Any comments regarding the timeline? This will not be applied to existing contracts. Only contracts that come after the chosen date. In the past 5 years only about 3% or 50 contracts out of 1851 closed contracts had out-of-state vendors. Based upon this sample the impact would be relatively small. This is incomplete data because not every one of those contracts had a training vendor listed.

Question arose as to how will we identify the use of out-of-state vendors? How will we be enforcing that they are out-of-state? What defines out-of-state?

Currently the regulation requires that they have an office with employees in California within 6 months of their application date.

Should we first tighten up online computer vendors? Any self-based computer which could be anywhere in the world, and realistically bring someone into California. From a revenue stream it still brings something to California. But how does it relate to our enforcing vendors?

Agreement was that the regulation should still go back into effect. Comment was they might be more successful if they know who their vendors are.

### **Public comment was requested on the issue of the timeline.**

Lance Hastings stated he thought his contract might have triggered this discussion. They were very transparent; as he reads the regulation it is not an issue. The outcome based success for California employees being trained in the Workforce Literacy program is fantastic and necessary. It is as important as on-the-job training skills in the manufacturing sector. The concern is in the future after the contract is over, they are no longer eligible even though they provided the best

training.

No other public comments.

Agreement was that January 1, 2024 was the preferred day to begin.

Next question: what do we want to do with our existing regulation? This regulation is already on the books and it's just a matter of complying. Options are: 1) comply with the regulation again, 2) get rid of it altogether or 3) change some aspect of it. When the regulation was written in 1995 there was no online e-training. Maybe we should just consider what we do with online vendors.

What happens if no vendors are listed in the proposal but during the contract term those vendors are added by the contractor? Is there a process at the staff level when that occurs which raises a flag for additional consideration?

There is no consistent practice with staff regarding that. If the regulation were to be amended to clarify that, then certainly it would trigger something. But only when ETP knows the vendor is being used.

Comment was made that there might be a line on the sign-in sheets that says vendor or trainer. Could this be audited?

Yes, there is a line for third party trainer at the bottom of the roster, not sure if it asks out of state. Also, the training rosters can take 6 months to get from the start date of the contract. That might be the one piece of legislation or change to the regulation we may want to talk about.

A question arose as to administrative subcontractors, currently the regulations only apply to training vendors. This would require revising the regulation.

Agreement was that the idea is to have the same vested interest to grow California business. To take the incentives and the resources and apply them in California.

Public comment from Michelle Rychener: When you submit an application you should know who your vendors are? During the term of the two year contract sometimes new training comes up that falls under the curriculum that was approved but wasn't accounted for before. So leave the option to choose a vendor during the term of the contract because things change.

Response was given that it would only be a concern if the vendor was out of state.

Public comment from Mike Stephens: Sometimes at the start of the contract they don't know some of the vendors. There are times on e-learning where you know the vendor is outside California. It can be challenging from an administration standpoint to continue with a state vendor if something pops up. So either we have to do a modification or a justification. There were two forms: out-of-state vendor and out-of-state training form. Lately we've been filling out the out-of-state training form. For instance, we are sending 2 people to Iowa because the manufacturer is giving a training and you know you can get that justified. But other times when a client likes a vendor it can be hard to find something in California. If an exception could be made for the CBT vendors which tend to be out of state.

Public comment from Ed Daily (CMTA): In addition to CBT a lot of LVC could also happen from anywhere. Where the instructor and the students aren't necessarily in the same state. More employers are going to hybrid types of training and the old regulations do not keep up with modern technology. Maybe look at whether or not the employees of California are getting good quality training regardless of the state the vendor is in.

Public comment from Phil Herrera: He is dubious of how helpful it is for the agency knowing that at the end of the day the chief beneficiary is the employees and that the employers will use what's best for them especially when the cost of training is way more than the reimbursement. We need to weed out the really big things like subcontractors. I want to make this money California facing.

Public comment by Michelle Rychener: If the regulation currently does not apply to CBT. Also, like Phil with multinational companies, sometimes the corporate offices are out of state and they chose the vendor for all offices. So maybe there could be a special dispensation for those types of training (both CBT and in person instruction). Michelle Rychener requested that regional offices receive training so that there is consistency in implementation.

The regulation is not currently being enforced but when it is it would apply to all forms of training including CBT. CBT does have a cap.

Regarding instructor-based virtual training how does the regulation read: do they need to be in California delivering this? Do they need to have a sales office in California? Can they be anywhere in the world? I think as an employer I am paying taxes here in California for this, so should the money go outside? We need to consider where the funding comes from. If there is a potential for the corporate headquarters outside of California we should consider being flexible and that could be part of the criteria.

Comment was made that the main point of returning to the regulation as written is to collect that information so that Panel can then make that decision. If we start enforcing regulation 4421 come January first, we still have the option where 'only if the panel finds that such services are unique to the employer/contractor and are available to provide that opportunity for justification'. Then we've kind of addressed all these issues and still incentivize those dollars stay in California training.

Request was made to announce at the September Panel meeting that we would start enforcing Regulation 4421 on January 1, 2024, and that justifications would be allowed. There may be a need to put this up for a Panel vote. There is no need to change the regulation at this time.

The enforcement of Regulation 4421 would not affect any existing contracts, only new contracts as of January 1, 2024.

### **Recordkeeping/LMS/Rosters and Alternative Recordkeeping**

Reminder that ETP is a performance-based program, not a grant program. In order to prove performance, records must be kept of your training. Training is documented by rosters. The documentation helps contractors get paid and helps ETP safeguard state funds. There are three items that address this documentation requirement in our rules. Staff and stakeholders have expressed frustration over these recordkeeping types. Our Regulation 4442 lays out all the

recordkeeping requirements for all training. Basically it is the information to be included on the rosters (we have templates of rosters). Contractors can use the templates or get their rosters approved by ETP. This is to make sure that whatever alternate roster they use is collecting all the required information. Some of the information required is the name of the course, the delivery method, date, duration, instructor name and signature, and the trainees' names and signatures. The rosters are a benefit to both ETP and the contractors. Regulation 4442.2 allows for the use of alternative record keeping systems, so they do not end up with 2 sets of documentation. The alternative record keeping needs to be reviewed and approved by ETP prior to use to ensure that the information required is included. Lastly we have the learning management (LMS) software programs that track training. If a company wants to use an LMS it will need to be approved by ETP first.

Looking for discussion regarding any changes that might be made.

Public comment from Phil Herrera: that the current process works great. The questionnaire is thorough. Recommendation to keep the current process.

Public comment from Mike Sneed: one of the frustrations he runs into is the valid signature question. What is a valid signature? Clarity is needed. In addition staff should look at the questions on the questionnaire and see if they are still relevant.

Public comment from Michelle Rychener: if they do have a paper roster and an LMS we recommend they continue with that but some only use the LMS. The current process is going well, no request for changes. There is some confusion regarding the log because it varies from Regional Office to Regional Office but Cal-E-Force doesn't require one. Is the log relevant? Current requirement that LMS be in place for 6 months, should this be changed if they change from one LMS to another.

Question came up as to whether there is any validation going on with the signature and LMS system. And what specifically does the regulation say about tracking.

## **VI. OPPORTUNITY FOR PANEL MEMBERS TO REQUEST AGENDA ITEMS FOR FUTURE PANEL MEETINGS**

Chair Newsom provided an opportunity for Policy Committee Members to request agenda items for future Policy Committee meetings.

One item was vendors and identification of them as we look at the packets and are we listing them or not. Another item was regarding what is defined as mandatory training, and is there legislation about safety, harassment, and discrimination training.

## **VII. PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA**

No comments

## **IX. MEETING ADJOURNMENT**

Chair Newsom adjourned the meeting at 2:27 p.m.