

CONTRACTORS STATE LICENSE BOARD

Title 16, California Code of Regulations, Section 823

Section 100 CHANGE WITHOUT REGULATORY EFFECT

WRITTEN STATEMENT OF EXPLANATION REGARDING CHANGES WITHOUT REGULATORY EFFECT

Pursuant to Title 1, Division 1, Chapter 1, Article 2, Section 100(a), of the California Code of Regulations (CCR), the Department of Consumer Affairs, the Contractors State License Board (Board or CSLB) submits this written statement explaining why the proposed amendments to section 823 of Article 2, Division 8, of Title 16, CCR do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision.

Business and Professions Code (BPC) section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedure Act (APA), that are reasonably necessary to carry out the provisions of the chapter of the Bus. & Prof. Code.

Existing language in BPC section 7068 establishes the qualification requirements for applicants for licensure with CSLB, including identifying the methods by which an applicant shall qualify for licensure by personal experience and knowledge, one of which is by the appearance of a responsible managing employee. (Bus. & Prof. Code, § 7068, subd. (b).) Subdivision (c) defines a “responsible managing employee” as an individual who is a “bona fide employee” of the applicant who is actively engaged in the classification of work for which they are the qualifying person on behalf of the applicant. Section 7068.1(a) provides that individuals qualifying on behalf of an individual or firm shall be responsible for exercising “direct supervision and control” of construction operations. However, prior to January 2022, neither of these statutes further defined these terms.

Title 16, section 823 of the CCR, which became operative on January 24, 1980, provides definitions of “bona fide employee” and “direct supervision and control.” The Board promulgated section 823 to implement and clarify these terms in BPC sections 7068(c) and 7068.1(a).

However, effective January 1, 2022, Assembly Bill (AB) 830 (Flora, Chapter 376, Statutes of 2021) adds definitions to BPC section 7068 for “bona fide employee of the applicant” and to section 7068.1 for “direct supervision or control.” As a result, there is no further need to define these terms in regulation.

Repeal Title of Regulation

As the Board seeks to repeal both subdivisions of the regulation, as set forth below, it proposes to delete the title of section 823, “Definitions: Bona Fide Employee; Direct Supervision and Control.”

Repeal Subdivision (a)

AB 830 updates BPC section 7068 to state, in part:

(c) (1) For purposes of this chapter, “a responsible managing employee” means an individual who is a bona fide employee of the applicant and is actively engaged in the classification of work for which that responsible managing employee is the qualifying person on behalf of the applicant.

(2) For purposes of this subdivision, the following definitions apply:

(A) “Bona fide employee of the applicant” means an employee who is permanently employed by the applicant.

Based on this amendment, CSLB proposes to repeal subdivision (a) of section 823 in its entirety because the definition of “bona fide employee” has been incorporated in BPC section 7068(c). This is a change without regulatory effect because it makes a regulatory provision consistent with a changed California statute. The definitions in Section 823 are inconsistent with the definitions for those terms in AB 830, and CSLB has no discretion to develop new definitions for these terms that are different from those in the chaptered bill. (Cal. Code Regs., tit. 1, § 100, subd. (a)(6)(A) and (B).)

Repeal Subdivision (b)

AB 830 updates BPC section 7068.1 to state, in part:

(c) The following definitions shall apply for purposes of this section:

* * *

(4) “Direct supervision or control” means any of the following:

(A) Supervising construction.

(B) Managing construction activities by making technical and administrative decisions.

(C) Checking jobs for proper workmanship.

(D) Supervision on construction sites.

Based on this amendment, CSLB proposes to repeal subdivision (b) in its entirety because the definition of “direct supervision or control” has been incorporated in BPC section 7068.1. This is a change without regulatory effect because it makes a regulatory provision consistent with a changed California statute. The definitions in Section 823 are inconsistent with the definitions for those terms in AB 830, and CSLB has no discretion to develop new definitions for these terms that are different from those in the chaptered bill. (Cal. Code Regs., tit. 1, § 100, subd. (a)(6)(A) and (B).)