FLOOR ALERT

August 30, 2018

TO: Members, California State Assembly

FROM: California Chamber of Commerce
Brea Chamber of Commerce
Building Owners and Managers Association
California Business Properties Association
California Hotel and Lodging Association
Camarillo Chamber of Commerce
Commercial Real Estate Development Association – NAIOP
Gilroy Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
International Council of Shopping Centers
National Federation of Independent Business
North Orange County Chamber
Official Police Garages of Los Angeles
Pacific Association of Building Service Contractors
Rancho Cordova Chamber of Commerce
Santa Maria Valley Chamber of Commerce

SUBJECT: AB 2079 (GONZALEZ FLETCHER) JANITORIAL WORKERS: SEXUAL VIOLENCE AND HARASSMENT PREVENTION TRAINING
OPPOSE/NON-CONCURRENCE – AS AMENDED AUGUST 24, 2018

The California Chamber of Commerce and the organizations listed above respectfully **OPPOSE AB 2079 (Gonzalez Fletcher)**, which seeks to create additional registration, enforcement, and training requirements on employers and individuals in the janitorial business.

The Fair Employment and Housing Act (FEHA) specifically regulates sexual harassment in the workplace and applies to all employers, including janitorial service providers, with five or more employees. FEHA provides protections to victims and imposes prevention requirements on employers. *See* Government Code

Sections 12900, *et seq*. **AB 2079** proposes to add specific and contradictory sexual harassment training requirements for the janitorial industry to the Labor Code**.** These new provisions are misplaced. Sexual harassment training should continue to be regulated by the Department of Fair Employment and Housing (DFEH) in order to prevent confusion as an employer might be compliant with DFEH regulations while violating duplicate and contradictory provisions of the Labor Code as implemented by **AB 2079**.

The standards imposed by **AB 2079** significantly limit the individuals who will be qualified to provide such training. For example, under FEHA, a qualified trainer is defined as an attorney, professor or instructor, human resource professional, or harassment prevention consultant. Each of these professionals must also meet other specific standards. *See* Cal. Code Reg. tit. 2, § 11024. As long as the trainers meet these standards, a business is allowed to hire and use whomever it prefers.

Yet, **AB 2079** would require organizations in the janitorial service industry to use only specific peer trainers from a list provided by an advisory committee. The bill states that the peer trainers must be used "in addition to" those qualified for sexual harassment training under FEHA. However, these peer trainers must also be hired to train employees on sexual harassment and harassment prevention. So, per the language of **AB 2079**, an employer must provide sexual harassment training that complies with FEHA and then separately hire a peer trainer to duplicate sexual harassment training and prevention.

AB 2079 states the organization "shall ensure that the peer trainer is paid an hourly rate of at least twice the state minimum wage." This will increase the cost to obtain such training for janitorial employers and employees because it will limit the open marketplace for this type of training. An organization should not be forced to use a specific company to provide training and then have to pay that third-party trainer at least twice the state minimum wage. Indeed, rates of pay for a peer trainer in the janitorial industry should not be statutorily required.

Additionally, under current law, employers of janitorial service employees must register with the Department of Industrial Relations (DIR). **AB 2079** would unnecessarily extend the registration requirements by mandating a company provide not only their own information, but also "the name of any subcontractor or franchise servicing contracts affiliated with a branch location, the total number of employees working out of each listed branch office, and the address of each work location serviced by a branch office." This additional requirement is unclear and overly burdensome. What does "affiliated" mean? How often does the employer need to update this information with the DIR? Does the employer need to update every time the number of employees changes for the "affiliate"? There is no logical reason for these additional requirements other than to unnecessarily impose punitive regulations on businesses within the janitorial service industry.

Finally, if these provisions are added to the Labor Code, employers will be exposed to additional and unnecessary liability. FEHA already allows victims who prevail in a sexual harassment suit to obtain compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney's fees. If sexual harassment protection is added to the Labor Code**,** employers are not only exposed to FEHA remedies, but also now lawsuits under the Private Attorneys General Act (PAGA).

PAGA allows an individual to pursue a "representative action" on behalf of similarly aggrieved employees without being subject to the strict filing requirements of a class action. If there are multiple Labor Code violations, penalties are stacked and very quickly add up. In addition, if the employee recovers any dollar amount, the employee is entitled to attorney's fees, which adds another layer of cost onto the employer.

For these reasons, we are **OPPOSED** to **AB 2079** and respectfully request your **"NO"** vote and that you **NON-CONCUR** with Senate Amendments when it comes before you for consideration.

cc: Camille Wagner, Office of the Governor
The Honorable Lorena Gonzalez Fletcher
Jennifer Richard, Assembly Committee on Labor and Employment
Joshua White, Assembly Republican Caucus
District Offices, Members, California State Assembly