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Commissioner Hewlett:

We write on behalf of the California Retailers Association (“CRA”) concerning prospective licensing requirements for employer-provided training programs involving the use of employee repayment agreements. The retail industry is a driving force for California’s economy. CRA represents a quarter of the state’s employment and \$330 billion worth of gross domestic product each year. We have significant concerns that mandating licensure and other regulatory requirements for company training programs will negatively impact California workers and employers.

1. Retailers that utilize training repayment agreements are not engaged in lending activity contemplated by applicable licensing statutes.

California law does not mandate licensure for company training repayment programs. For example, the California Financing Law (CFL),¹ which requires lenders and brokers to obtain licenses from the state of California, only applies to those persons who are “engage[d] in the business of a finance lender or broker.” In general, retailers are not engaged in the business of financial lending and do not profit from training repayment agreements. Additionally, retailers only offer training to their employees—paying employees their wages throughout the duration of the training—they do not offer training or credit to the broader public.

While existing California consumer protection statutes require licenses for some lending activity, those statutes were clearly not intended to—and do not—apply to retailers who provide internal training programs for their employees. Extending California lending laws to training programs will reduce private investment in workforce training programs and harm prospective employees who lack the requisite training necessary for the specific occupation and the means to pay to acquire such training.

Additionally, the California Consumer Financial Protection Law (CCFPL),² which is intended to protect consumers from unfair, deceptive, or abusive acts or practices related to consumer financial products or services is also inapplicable to employer-provided training programs. The consumer-facing CCFPL covers only persons offering financial products or services to consumers primarily for personal, family, or household purposes.³ It is not meant to apply to a retailer’s use of repayment agreements for employer-provided training. Workplace repayment agreements are not covered because they are job-related. Training is offered only to current employees to provide them with work-related skills. While this benefits the employees by increasing their skills

¹ Cal. Fin. Code § 22000 *et seq.*

² Cal. Fin. Code § 9000 *et seq.*

³ *Id.* § 90005(e)(1).

and marketability to other employers in the industry, those benefits of employee training repayment programs cannot (and should not) expose retail companies to liability under the CCFPL.

2. Employers who provide training to their workers are also not subject to the California Education Code because they do not award degrees or diplomas.

The California Education Code (CEC) similarly does not apply. The CEC requires private postsecondary educational institutions to obtain state approval in order to operate.⁴ This requirement does not apply to employers, like retailers, who provide training for their employees because employers are not educational institutions within the meaning of the statute. The statute defines a “private postsecondary educational institution” as one that offers a formal instructional program whose curriculum is designed for students who have completed, or are beyond the compulsory age for, secondary education.⁵ Curriculum is in turn defined to mean a set of courses or modules of instruction that are prerequisites for the award of a degree or diploma.⁶ When retailers provide on-the-job training to their employees, they generally do not award a degree or diploma upon completion of the training. Thus, employers that provide training programs are not private postsecondary institutions for the purposes of the CEC where, among other things, the employers do not award a degree or diploma at the conclusion of the training.

This interpretation of the CEC conforms with common sense. Companies are not schools and it would be illogical and inefficient to require private businesses to seek state licenses and approvals in order to provide job training to their workers. Stretching the meaning of the CEC to cover workplace training programs would increase the cost to employers to train their workers because the companies would have to subject themselves to the Bureau for Private Postsecondary Education’s approval process. Other employers might simply be discouraged from providing job training by the added regulatory burden. Between the increased cost to administer training programs and the chilling effect on administering them at all, the net result would be fewer opportunities for on-the-job training for employees.

3. Employer-provided training benefits workers and the broader economy, and employers would provide less training to their workforce if it were more cumbersome or costly to do so.

Using strained readings of consumer protection and education statutes to punish employers who use training repayment agreements would have detrimental effects on the workforce and the broader economy. Employer-provided training is an investment and, like any other investment, employers will only devote resources to training their employees if they are able to later reap the rewards of their more highly-trained workforce. Implementing a licensing regime or pursuing enforcement against companies who offer these programs harm both the employer and the employee.

It is not just employers who benefit from employer-provided training. Once their employer has paid for their training, an employee retains their newly acquired skills, which can be used throughout their career, including at competing businesses of the employer who provided the training. And such training is vital to the employee as it increases the employee’s marketability and earnings potential in the specific industry. Importantly, if companies no longer offered employee training repayment programs due to costly licensing requirements or fear of enforcement actions, employees with limited means who lack specific skills will no longer have an affordable avenue to acquire requisite job training.

⁴ Cal. Educ. Code § 94886.

⁵ *Id.* §§ 94846; 94857–58.

⁶ *Id.* § 94828.

Public and private investment in workforce training has fallen to its lowest level in four decades.⁷ In an attempt to reduce costs, many companies that used to offer on-the-job training now seek to hire pre-trained workers for open positions instead.⁸ Employers that provide that beneficial training contribute to a well-trained workforce and should not be penalized for doing so by being required to clear additional regulatory burdens. Training repayment agreements allow these employers to recoup their investments in employee training when employees leave before the employer has accrued the benefit of a more skilled labor force. The ability to freely use repayment agreements would thus encourage employers to offer more on-the-job training to their employees, helping to reverse the economy-wide trend of declining workforce training. The permissive use of repayment agreements, then, generates benefits that accrue to the economy as a whole because repayment agreements tend to lead to a more highly trained and productive workforce. Individual workers also benefit from increased on-the-job training because they retain and are able to capitalize on the skills they acquired from employer-provided training long after the period of their repayment agreement has expired.

To conclude, CRA urges you not to attempt to use existing statutes to impose licensing requirements on employers who offer employees job training subject to repayment agreements. Imposing licensing requirements on employer-provided training is outside the scope of the statutes at issue, and the ability to use repayment agreements incentivizes employers to provide more training to their workforce, creating benefits for individual workers, businesses, and society as a whole.

We would very much like to meet with you to discuss our concerns in more detail. Please let us know your willingness to engage in such discussions.

Sincerely,



Ryan Allain
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California Retailers Association

⁷ See Harry J. Holzer, *Workforce Development as an Antipoverty Strategy: What Do We Know? What Should We Do?* (Inst. for the Study of Lab., Discussion Paper No. 3776, 2008), <http://ftp.iza.org/dp3776.pdf>.

⁸ See Peter Cappelli, *What Employers Really Want? Workers They Don't Have to Train*, WASH. POST (Sept. 5, 2014), <https://www.washingtonpost.com/news/on-leadership/wp/2014/09/05/what-employers-really-want-workers-they-dont-have-to-train>