



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

**PUBLIC UTILITIES COMMISSION**

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TO PARTIES OF RECORD IN RULEMAKING 12-12-011:

This is the proposed decision of Commissioner Shiroma. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 2, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ ANNE E. SIMON  
Anne E. Simon  
Chief Administrative Law Judge

AES:jnf  
Attachment

Decision **PROPOSED DECISION OF COMMISSIONER SHIROMA**  
(Mailed 4/29/2022)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on  
Regulations Relating to Passenger  
Carriers, Ridesharing, and New  
Online-Enabled Transportation  
Services.

Rulemaking 12-12-011

**DECISION ADOPTING UNIFORM TAXONOMIES FOR SEXUAL ASSAULTS  
AND SEXUAL HARASSMENTS THAT TRANSPORTATION NETWORK  
COMPANIES MUST USE FOR THEIR ANNUAL REPORTS, AS WELL AS  
ADOPTING TRAINING, INVESTIGATING, AND REPORTING PROTOCOLS**

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**DECISION ADOPTING UNIFORM TAXONOMIES FOR SEXUAL ASSAULTS AND SEXUAL HARASSMENTS THAT TRANSPORTATION NETWORK COMPANIES MUST USE FOR THEIR ANNUAL REPORTS, AS WELL AS ADOPTING TRAINING, INVESTIGATING, AND REPORTING PROTOCOLS**

**Summary**

This decision adopts uniform taxonomies for sexual assault and sexual harassment so that the Transportation Network Companies (TNCs) maintain consistency in definitions, language and terminology when reporting such incidents in their Annual Reports. This decision also adopts baseline training, investigating, and reporting standards for sexual assault and sexual harassment claims to minimize the occurrence of such incidents, and to provide the TNCs with consistent protocols for investigating and resolving such incidents. TNCs may supplement the training, investigation, and reporting protocols adopted today with additional best practices that are learned after consulting with persons and companies who are recognized experts in the fields of sexual assault and sexual harassment training and investigating.

This proceeding remains open.

**1. Background**

The need for uniform sexual assault and sexual harassment taxonomies, *i.e.* using a standardized set of terminologies, definitions, language and references, has been a growing concern for the Commission. As TNC operations continued to grow and become one of the preferred modes of passenger transportation in California, the Commission has become increasingly aware of anecdotal reports of TNC passengers alleging various types of sexual assaults perpetrated by their TNC drivers. In an effort to keep up with the TNC business model and retrieve relevant data from the TNCs in their Annual Reports and to ensure that such claims were properly investigated and resolved, the Commission revised and

expanded the reporting template to require TNCs to include incidents of sexual assault and sexual harassment in their Annual Reports.

But as these Annual Reports were submitted and reviewed, the Commission learned that the TNCs were not using consistent taxonomies for reporting sexual assault and sexual harassment claims, and this decision uses Uber Technologies, Inc. (Uber) and Lyft, Inc. (Lyft) as examples since these two TNCs occupy more than 99.9 percent of the TNC market in California. With respect to Uber, for its 2017-2019 Annual Reports, Uber did not provide a definition of assault or harassments. Instead, for sexual assault, Uber reported attempts or completed physical contact of a sexual nature. For sexual harassment, Uber reported non-contact unwanted experiences and reported behavior of a sexual nature that was without consent or had the effect of threatening or intimidating a user against whom the conduct is directed. Uber adopted a more expansive approach to identifying sexual assault and sexual harassment claims in 2019 when Uber published its December 5, 2019, US Safety Report that identified 5,981 incidents of claimed sexual assault and sexual harassment that allegedly occurred in 2017 and 2018, 1,243 of which occurred in California. In that US Safety Report, Uber utilized definitions of sexual assault and sexual harassment that were derived from its consultations with Helping Industries to Classify Reports of Sexual Harassment, Sexual Misconduct, and Sexual Assault, a joint project of the National Sexual Violence Resource Center and the Urban Institute.

A similar evolution in the concepts of sexual assault and sexual harassment can be seen in Lyft's Annual Reports. From 2017 to 2019, Lyft used internally defined incidents of assault and harassment and grouped the incidents into incident categories that were defined by example. Next, prior to June of

2019, Lyft used the following definition of sexual assault from the Department of Justice: any nonconsensual sexual act proscribed by Federal, tribal, or state law, including when the victim lacks capacity to consent. More recently, on or about October 22, 2021, Lyft issued its Community Safety Report (Community Report), in which it collected 4,158 reports of sexual assault, including 360 reports of rape, from 2017 through 2019. In its Community Report, Lyft defined sexual misconduct in accordance with the definitions developed by RALIANCE, a national partnership dedicated to ending sexual violence:

In November 2018, RALIANCE, a national sexual violence prevention organization, announced the Sexual Misconduct and Violence Taxonomy, a new form of categorization that created a uniform standard for reporting and classifying reported safety incidents that has been used so far by appbased companies. Lyft categorizes incident reports according to this taxonomy to better understand, analyze, prevent, respond to and address safety incidents on the platform. The taxonomy classifies sexual assault and misconduct into 21 categories. This report includes five of the most serious categories of sexual assault: Non-Consensual Sexual Penetration; Attempted Non-Consensual Sexual Penetration; Non-Consensual Kissing of a Sexual Body Part; Non-Consensual Touching of a Sexual Body Part; and Non-Consensual Kissing of a Non-Sexual Body Part.

Lyft has also utilized RALIANCE's taxonomy for sexual assault and sexual harassment since June of 2019 for reporting these incidents in its Annual Reports.

Because potentially different taxonomies being used by each TNC for identifying and reporting sexual assault and sexual harassment claims could impact uniformity of reporting in their Annual Reports, on September 22, 2021, the Commission's Consumer Protection and Enforcement Division sent out data requests to Uber and Lyft and asked that "for all Annual Reports provided to the CPUC from September 2017 to the present, provide a taxonomy list of assault

and harassment types (*i.e.* category) that was used to submit data for each of [Uber and Lyft’s] Assault and Harassment reports.” Uber and Lyft submitted their responses on October 12, 2021, and October 20, 2021, respectively.

Based on the Commission’s review and evaluation of these responses, the Commission determined that it would be beneficial to adopt standardized taxonomies for sexual assault and sexual harassment for use in preparing their Annual Reports for 2022 and thereafter. To that end, on December 9, 2021, the assigned Commissioner issued her Third Amended Phase III. C. Scoping Memo and Ruling of Assigned Commissioner (Third Amended Scoping Memo), wherein she asked the parties to answer a series of questions regarding sexual assault and sexual harassment definitions, training, investigating, and reporting. Lyft, Uber, and the California Public Utilities Commission’s Consumer Protection and Enforcement Division (CPED) filed Opening Comments on January 21, 2022. Lyft, Uber, CPED, and HopskipDrive Inc. (HSD) filed Reply Comments on January 28, 2022.

## **2. Discussion and Analysis**

### **2.1. What Definitions and Taxonomies of Sexual Assault and Sexual Harassment, if any, Should the Commission Adopt that Should be Applicable to all TNCs Subject to its Jurisdiction in Preparing their Annual Reports for 2022 and thereafter?**

#### **2.1.1. Comments**

##### **Lyft**

Lyft proposes that the Commission uses the definitions that have been adopted by RALIANCE:

*Sexual Assault:* Physical or attempted physical conduct that is reported to be sexual in nature and without the consent of the user. Sexual body parts are defined as the mouth, female

breasts, buttocks, or genitalia. The phrase "between the legs" is considered to reference a sexual body part. All other body parts are characterized as non-sexual. When only a non-sexual body part is involved, either of the following provides context for the 'sexual nature' of the contact or attempted contact: Sexual misconduct of any type; or Reporter's explicit perception that the contact was either flirtatious, romantic, or sexual.

***Sexual Misconduct:*** Non-physical conduct (verbal or staring) of a sexual nature that is without consent or has the effect of threatening or intimidating a user against whom such conduct is directed. This includes explicit or non-explicit verbal comments ( or nonverbal, non-physical) such as flirting, personal comments on appearance, and inquiries on relationship status. Catcalling (shouting, yelling, whistling) is also defined as sexual misconduct.

Lyft suggests that the Commission use RALIANCE's taxonomies, which Lyft acknowledges do not include a separate category for sexual harassment.

Lyft also suggests that the Commission may want to utilize some of the Safety Settlement Funds approved in Decision 21-12-003 to enable CPED to hire a consultant to conduct more research and provide recommendations.

### **Uber**

Uber states that in 2018, it partnered with RALIANCE, the National Sexual Violence Resource Center (NSVRC), and the Urban Institute to create The Sexual Misconduct and Sexual Violence Taxonomy, which classifies acts of sexual violence using behaviorally specific definitions which are aligned with best practices in the research of sexual violence. Unwanted sexual experiences are classified into two overarching categories – sexual assault (*i.e.*, any physical or attempted physical conduct reported to be sexual in nature and is without consent) and sexual misconduct (*i.e.*, non-contact unwanted experiences of a sexual or romantic nature) – which are further divided into a total of 21 secondary



categories. Uber suggests that the Commission should adopt this taxonomy, as provided in Appendix A of Uber's Comments.

Finally, Uber asks that the scope of the Annual Reports be limited to only incidents where a TNC driver was suspended or deactivated for any reasons relating to safety and/or consumer protection.

### CPED

CPED argues that Uber's lengthy categorization in its 2017-18 US Safety Report results in the deemphasis of the definitions and taxonomies of sexual assault and sexual harassment and does not give the Commission adequate information to make an informed decision on what categories are appropriate.

#### **2.1.2. Discussion**

The Commission believes it will be best to adopt broad and consistent definitions of sexual assault and sexual harassment and use the specific types of sexual assault and sexual harassment that Lyft and Uber have proposed as non-exhaustive yet illustrative examples of the types of conduct that can fit within these two taxonomies. By starting with a macro definitional approach, the Commission can assure itself that the TNC Annual Reports will capture the greatest number of sexual assault and sexual harassment claims.

Additionally, in adopting these definitions, we are guided by expansive California law that the Legislature has developed in identifying sexual assaults, sexual batteries, and sexual harassment. While we appreciate Lyft and Uber's suggestions to rely on the definitions developed by RALIANCE and other companies that specialize in identifying and dealing with sexually related claims, we believe that following the direction of our Legislature gives our definitions the clarity and solid legal foundation needed to guide TNCs in determining

which claims fit within the sexual assault and sexual harassment taxonomies that must be included in their Annual Reports.

### **Sexual Assault**

With respect to sexual assault, the Commission adopts the following three-part taxonomy:

- An act by a person who touches or attempts to touch the intimate parts of another (*e.g.* sexual organs, mouth, etc.); and
- The touching or attempted touching is against the will of the person being touched.
- 

In arriving at this definition, the Commission has considered both the body of California criminal and civil law. California Penal Code § 243.4(a) defines sexual assault and sexual battery the same way:

Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

Our decision expands Penal Code § 243.4(a) by including “attempts” along with the completed “touches.”

We note that Penal Code § 243.4(c) provides that a sexual assault or sexual battery can occur against an unconscious person:

Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery.

While it might seem unnecessary to include unconscious persons as a class of victims to be covered by sexual assault protection since the touching or attempted touching would automatically against the will of the person being touch, the Commission accepts the Legislature's desire to identify this class of victims and, as such, the definition of sexual assault that the Commission adopts also applies to persons who are unconscious.

Beyond the criminal statutes that inform the Commission's decision, we are also guided by the civil definition of sexual assault. Civil Code § 1708.5(a) provides that any of the following constitutes a sexual battery if it is established by a preponderance of the evidence that the person sued:

- (1) Acts with the intent to cause a harmful or offensive contact with an intimate part of another, and a sexually offensive contact with that person directly or indirectly results.
- (2) Acts with the intent to cause a harmful or offensive contact with another by use of the person's intimate part, and a sexually offensive contact with that person directly or indirectly results.
- (3) Acts to cause an imminent apprehension of the conduct described in paragraph (1) or (2), and a sexually offensive contact with that person directly or indirectly results.
- (4) Causes contact between a sexual organ, from which a condom has been removed, and the intimate part of another who did not verbally consent to the condom being removed.
- (5) Causes contact between an intimate part of the person and a sexual organ of another from which the person removed a condom without verbal consent.<sup>1</sup>

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<sup>1</sup> See also California Civil Jury Instruction 1306.

Civil Code Section 1708.5 has been interpreted to require that the batteree did not consent to the contact (*Angie M. v. Superior Court* (1995) 37 Cal.App.4<sup>th</sup> 1217, 1225), since lack of consent is an essential element to a civil sexual battery claim. (*Rains v. Superior Court* (1984) 150 Cal.App.3d 933, 938.)

As with the definition of sexual assault that the Commission adopts with this decision, Civil Code § 1708.5 covers both the intent to act (*i.e.*, “acts with the intent”) as well as the actual contact (*i.e.*, “causes contact”). While Civil Code § 1708.5 speaks of sexual battery and the Commission is requiring TNCs to report on sexual assaults, we see the two legal terms as being synonymous for determining a TNC’s reporting duty. In words, an assault or battery that would fit within the legal definition of either a sexual assault or a sexual battery must be included in a TNC’s Annual Report.

Having established the broad taxonomy of sexual assault, we list the following examples from Lyft’s and Uber’s Comments as a non-exhaustive list of conduct that TNCs should report in their Annual Reports as a sexual assault:

- Attempted touching of a non-sexual body part. “Sexual body parts” are defined as the mouth, breasts, buttocks, or genitalia. The phrase “between the legs” is considered to reference a sexual body part. All other body parts are characterized as non-sexual.
- Attempted kissing of a non-sexual body part.
- Attempted touching of a sexual body part.
- Attempted kissing of a sexual body part.
- Non-consensual touching of a non-sexual body part.
- Non-consensual kissing of a non-sexual body part.
- Attempted non-consensual sexual penetration.
- Non-consensual touching of a sexual body part.
- Non-consensual kissing of a sexual body part.

- Non-consensual sexual penetration.

Finally, the Commission rejects Uber's suggestion that Uber need only report incidents where a driver has been deactivated following an investigation. The Commission needs to receive an accurate accounting of number of sexual assault claims made against a TNC driver in order to know of the broadest number of sexual assault claims being made. In those instances where a claim has been made and the TNC driver has not been deactivated following an investigation, the Commission may want its staff to conduct its own investigation into a sexual assault incident to understand the circumstances that led to the determination not to deactivate a TNC driver.

### **Sexual Harassment**

The Commission adopts the following definition of sexual harassment:

- Someone who engages in an act of
- unwelcome visual, verbal, nonverbal, or physical conduct (either a single act or multiple acts),
- based on sex (*i.e.* gender),
- which creates an intimidating, hostile, or offensive environment to a reasonable person.

As with the definition adopted herein of sexual assault, the definition of sexual harassment that the Commission adopts is grounded in California law. The Fair Employment and Housing Commission has defined sexual harassment as "verbal, physical, or sexual behavior directed at an individual because of her, or his, gender." (*Peralta Community College District v. Fair Employment and Housing Commission* (1990) 52 Cal.3d 40, 45, Footnote 2, citing to *Dept. Fair Employment and Housing Commission v. Ambylou Enterprises, Inc.* (1982) No. 82-06, FEHC Precedential Decisions 1982-1983, CEB 3, p. 6; Cal. Code Regs., tit. 2, § 7287.6, subd. (b)(1).) On its website, the Fair Employment and Housing Commission

offers the following more expansive explanation of what is covered by the term sexual harassment:

Sexual harassment is a form of discrimination based on sex/gender (including pregnancy, childbirth, or related medical conditions), gender identity, gender expression, or sexual orientation. Individuals of any gender can be the target of sexual harassment. Unlawful sexual harassment does not have to be motivated by sexual desire. Sexual harassment may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity.

Although the concept of sexual harassment grew out of the employment context,<sup>2</sup> we believe these definitions are elastic enough to be useful in TNC operations where a driver engages in conduct while in the course of providing TNC transport (or even after the passenger has exited the TNC vehicle and the driver continues to engage with the passenger) that would fit within the Fair Employment and Housing Commission's definitions.

Our conclusion finds further legislative support when we consider how the law of sexual harassment has evolved since its inception. Civil Code § 51.9 was originally designed to address sexual harassment claims arising from

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<sup>2</sup> In *Dyna-Med, Inc. v. Fair Employment and Housing Commission* (1987) 43 Cal.3d 1379, 1383-1384, the California Supreme Court summarized the history of how sexual harassment became illegal in the workplace. The California Fair Employment Practice Act (FEPA) (former Lab. Code, § 1410 *et seq.*) was enacted in 1959 and recodified in 1980 as part of the Fair Employment and Housing Act (Stats. 1980, ch. 992, § 4, at 3140 *et seq.*). The law established that freedom from discrimination in employment on specified grounds, including sex, was a civil right (Government Code § 12921) and such discrimination was against public policy (Government Code § 12920). The law declared discrimination or harassment on the specified grounds to be an unlawful employment practice. (Government Code § 12940, subd. (h).) Federal law was similarly worded. (See Title VII (42 U.S.C. § 2000e *et seq.*, which defines as "an unlawful employment practice" discrimination by an employer based on an applicant's or employee's "race, color, religion, sex, or national origin." Title VII treats sexual harassment as another form of sex discrimination. (*Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57, 64.)

relationships between providers of professional services and their clients. The examples provided included physicians, psychiatrists, dentists, attorneys, real estate agents, accountants, bankers, building contractors, executors, trustees, landlords, teachers, and any other "relationship that is substantially similar to" those specifically listed.<sup>3</sup> But in 2018, the Legislature amended the law to clarify that a cause of action for sexual harassment in the non-traditional employment setting can exist if the plaintiff can establish that there was a business, service, or professional relationship with the person accused of engaging in sexual harassment. Civil Code § 51.9(a) now provides that a person is liable in a cause of action for sexual harassment when the plaintiff proves all the following elements:

- (1) There is a business, service, or professional relationship between the plaintiff and defendant or the defendant holds himself or herself out as being able to help the plaintiff establish a business, service, or professional relationship with the defendant or a third party.
- (2) The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.
- (3) The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury, including, but not limited to, emotional distress or the violation of a statutory or constitutional right, as a result of the conduct described in paragraph (2).<sup>4</sup>

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<sup>3</sup> Civ. Code, § 51.9, subd. (a)(1)(A)-(F). (*See Hughes v. Pair* (2009) 46 Cal.4<sup>th</sup> 1035, 1044.)

<sup>4</sup> Amended by Stats. 2018, Ch. 951, Sec. 1. (SB 224) Effective January 1, 2019.

By agreeing to transport a customer in TNC vehicle, there would be a “service” relationship between the driver and the passenger that would fall within the scope of Civil Code § 51.9.

Having established the broad taxonomy of sexual harassment, we list the following examples from Lyft’s and Uber’s Comments, as well as from our review of California law, as a non-exhaustive list of conduct that TNCs should report in their Annual Reports as an example sexual harassment:

- Comments about or asking personal questions (which would include questions about the user’s personal life, home address, contact information, romantic or sexual preferences).
- Comments about or gestures regarding appearance.
- Flirting.
- Explicit sexually suggestive gestures.
- Explicit sexually suggestive comments.
- Displaying of indecent material.
- Displaying Indecent photography/video without consent.
- Soliciting a sexual act.
- Masturbation or engaging in acts of indecent exposure.
- Turning general conversations into conversations regarding sex.
- Verbal threats of a sexual nature.



**2.2. What Minimum Training Protocols, if any, Should the Commission Require TNCs to Adopt to Train its Drivers that Sexual Assault and Sexual Harassment are Punishable by Law and must be Prevented?**

**2.2.1. Comments**

**Lyft**

Lyft believes that TNCs should inform all drivers of the terms and conditions under which they are authorized to operate and provide clear guidance on the behaviors that are prohibited, including, but not limit to, any form of sexual assault or misconduct. Lyft states that in 2019, it partnered with RAINN (Rape, Abuse & Incest National Network) to develop a community safety education course that Lyft drivers must complete. This education course was revised in late 2020 and consists of a multimodal tutorial that covers three primary topics: recognizing, responding to, and reporting sexual misconduct. Additional training protocols should be victim-centered and trauma-informed.

**Uber**

Like Lyft, Uber states that in 2019, it deployed education modules that RAINN developed and focus on the following goals: creating a safe community; respecting boundaries and uncomfortable conversations; conversational boundaries and inappropriate conversations; respect for personal space and physical boundaries and untolerated behaviors; sexual violence awareness; and bystander intervention. The modules share information about ways to respectfully interact while on the app and are sent to riders and drivers when they receive an initial report of unwanted behavior.

Drivers are also required to review sexual assault and sexual misconduct video training that covers similar topics during onboarding. Starting in 2021, Uber states it began requiring US-based drivers to complete an education

program on preventing sexual misconduct and sexual assault. Uber states it supports extending training to drivers and riders should the Commission, in consultation with experts in the field, determine that doing so is appropriate across the entire TNC industry.

### **CPED**

CPED recommends that all TNC drivers receive regular training on the prevention of sexual assault and sexual harassment, with content developed or provided by independent experts on the issues. The training materials should be provided to TEB for its review either regularly or upon request from TEB. All drivers must receive this training before transporting any passengers and must certify that all drivers have complied with this requirement.

### **HSD**

HSD is concerned that recommendations for broad training requirements for all TNCs, regardless of a particular TNC's business model, will not achieve the Commission's goals of improving safety and will require small TNCs to allocate resources on unnecessary training. HSD points out that its business model is primarily focused on arranging rides for unaccompanied minors and other persons that need assistance during the daytime hours. As such, it does not make sense in HSD's view to train its drivers on issues relating to accepting rides from adults. Rather than adopting a one-size-fits-all training model, HSD suggests that smaller niche TNC operations should have the flexibility in creating its training programs and to submit the programs to CPED.

### **2.2.2. Discussion**

The Commission adopts the following training protocols:

- Each TNC must develop a training program on its own, or in partnership/consultation with a recognized expert in the field of sexual assault and sexual harassment, that is

accessible either in person, on a computer, or mobile device.

- As for the sexual assault component of the training, the course shall, at a minimum, instruct on the definition of sexual assault and the various examples of conduct that can constitute sexual assault.
- As for the sexual harassment component of the training, the course shall cover the definition of unlawful sexual harassment under the FEHA and Title VII of the Civil Rights Act of 1964 and provide examples of the types of conduct that constitute sexual harassment.
- As part of its sexual assault and sexual harassment training, each TNC must also adopt gender identity training as required by Senate Bill 396.
- Each TNC shall also provide written policies (either in hard copy or electronic form) for preventing sexual assault and sexual harassment to each of its TNC drivers.
- Each TNC's training program shall be operational within 60 days from the adoption of this decision.
- All TNC drivers shall have completed the training within 120 days from the adoption of this decision.
- Each TNC shall provide a copy of the current version of its training program and written policies to the Commission upon request.
- The training and written policies must be available in English, and may also be available in (but not limited to) Spanish, Korean, Chinese, Russian, Tagalog, and Vietnamese.
- Each TNC driver must complete and pass the training annually.
- Each TNC driver must receive a certificate of completion, with a copy going to TNC for whom the driver provides TNC transport through that TNC's app. Each TNC shall maintain the certificates of completion for each driver providing TNC transport. For drivers no longer

subscribing to the TNC's app, the TNC shall maintain the certificates of completion for two years.

In adopting the above training requirements, the Commission is guided in part by the body of law that the California Legislature developed for instructing employees about sexual harassment. California was one of the first states to outline the requirements for sexual harassment compliance training with the August 4, 2004 passage of Assembly Bill 1825, codified by Government Code § 12950.1., which required employers with fifty or more employees or contractors to meet certain standards regarding sexual harassment training and education in the workplace. Government Code § 12950.1 was amended, effective January of 2019, by Senate Bill (SB)1343 which extended the training requirements to all employers of five or more employees. With the amendment, Government Code § 12950.1(a) reads as follows:

By January 1, 2020, an employer having five or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California within six months of their assumption of a position. An employer may provide this training in conjunction with other training provided to the employees. The training may be completed by employees individually or as part of a group presentation, and may be completed in shorter segments, as long as the applicable hourly total requirement is met. An employer who has provided this training and education to an employee after January 1, 2019, is not required to provide training and education by the January 1, 2020, deadline. After January 1, 2020, each employer covered by this section shall provide sexual harassment training and education to each employee in California once every two years. The training and education required by this section shall include information

and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. The department shall provide a method for employees who have completed the training to save electronically and print a certificate of completion.

While lengthy, Government Code § 12950.1(a) can be broken down into important components: (1) the requirement to provide at least two hours of sexual harassment training for supervisors, and one hour for all nonsupervisory employees; (2) within six months of their assumption of a position; (3) include information and practical guidance regarding the applicable federal and state law on the prevention of sexual harassment; (4) practical examples of sexual harassment; and (5) provide a certificate of completion that can be electronically shared.

The requirements we adopt today mirror those of Government Code § 12950.1(a) but with the following modifications: first, we require the training of both sexual assault and sexual harassment; second, we require the training to be completed annually as opposed to every two years. We believe annually training is important given the number of rides that TNC drivers provide on an annual basis, which leads to many more interactions with different people than an employee might encounter in the conventional employment workspace.

Finally, we believe it is important to include, as part of the sexual assault and sexual harassment training, gender identity training. Senate Bill 396, which

went into effect on January 1, 2018, amended Government Code § 12950.1 to require employers with 50 or more employees to provide training regarding gender identity, gender expression, and sexual orientation:

- (c) An employer shall also provide training inclusive of harassment based on gender identity, gender expression, and sexual orientation as a component of the training and education specified in subdivision (a). The training and education shall include practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation, and shall be presented by trainers or educators with knowledge and expertise in those areas.

SB 396 explained that the purpose for this addition to Government Code § 12950.1 was to address sexual harassment of the gay, lesbian, bisexual, and transgender (LGBT) communities in California. According to the Williams Institute at the UCLA School of Law, California is home to 1.3 million LGBT adults, including over 100,000 transgender adults. Unfortunately, LGBT people, and transgender people in particular, continue to experience harassment in workplace settings. SB 396 points out that a 2015 U.S. Transgender Survey found that 15% of the respondents reported being verbally, physically, or sexually harassed at work. As such, it is important that the sexual assault and sexual harassment training that the TNCs provide to their drivers includes a training component for gender identity so that members of the LGBT community can avail themselves of TNC transportation without fear of gender-based assaults or harassment.

Finally, the Commission addresses HSD's concern that smaller TNCs with a niche customer base should be able given the flexibility to develop their own training programs and submit them to CPED. While we appreciate HSD's point that it is unlikely that its drivers will transport the types of passengers that

subscribe to Uber and Lyft, the fact remains that minors and other niche customer bases need to be equally protected from sexual assault and sexual harassment. With respect to children, California has enacted a series of child molestation laws that make it a crime to engage in, or to attempt to engage in, sexual acts with a child under 18 years of age, and these laws prohibit conduct that can easily fall within the scope of a sexual assault or a sexual harassment claim. For example, Penal Code § 288 makes it a crime to commit a lewd or lascivious act on a child, and lewd acts include touching a child's body for sexual purposes or causing a child to touch him/herself or someone else for a sexual purpose. Such lewd conduct is like the type of conduct that a TNC must report as a sexual assault if a claim is made to the TNC. And Penal Code § 647.6 criminalizes the act of annoying a minor under the age of 18 and annoy refers to conduct that is motivated by a sexual interest in a child, and is likely to disturb, irritate or be observed by a child. Such annoyance is the type of conduct that a TNC must report as sexual harassment if a claim is made to the TNC. Accordingly, a TNC driver transporting a minor must receive the same training as a TNC driver transporting an adult so that they are both aware of the types of conduct that is prohibited while in the course of providing TNC passenger transport, regardless of the passenger's age.

**2.3. What Minimum Standards, if any, Should the Commission Require TNCs to Adopt for Investigating and Resolving Claims of Sexual Assault and Sexual Harassment?**

**2.3.1. Comments**

**Lyft**

Lyft states that TNCs should make best efforts to contact the parties involved, consider all available evidence, and review available data, including

the involved user(s) account history, to reach a determination regarding the appropriate actions to help ensure the safety of the platform and fairness to the parties involved. TNCs should have an established process to comply with valid legal requests for information concerns these types of incidents by law enforcement and other officials, with appropriate protections for user privacy.

### Uber

Uber states that it does not oppose the adoption of minimum standards for investigating and resolving sexual assault and harassment complaints for all TNCs and other passenger service industries subject to the Commission's jurisdiction, but stresses that any protocols should allow for flexibility and discretion. In Uber's view, a potential model standard could mirror what has already been developed and codified in the insurance fraud context, in which investigations must complete the following steps: a thorough analysis of a claim; identification and interviews of potential witnesses who may provide information on the accuracy of the claim; utilization of industry-recognized databases; preservation of documents and other evidence; and writing a concise and complete summary of the investigation, including the investigator's findings regarding the claim and the basis for their findings.<sup>5</sup>

Equally important in Uber's view is the need to adopt investigative standards that respect the survivor's agency, privacy, and emotional and physical well-being. As such, investigative standards should be adopted in consultation with practitioners in the field of victim services so that the standards adopted do not compound and exacerbate the effects on a survivor's trauma.

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<sup>5</sup> See Cal. Code Regs. Tit. 10, § 2698.36.



To that end, Uber suggests that the Commission utilize the three million dollars from the Safety Settlement Funds received by the Commission pursuant to Decision (D.) 21-12-003 to hire a consultant to perform an evaluation of the TNC industry's existing protocols and practices for classifying and reporting violence (including sexual violence), and develop recommendations of industry-wide best practices for receiving, reporting, and responding to complaints of violence (including sexual violence). Uber also suggests that the Commission should direct CPED to convene a panel including CPED representatives, Uber, and at least two other TNCs to select the consultant.

Finally, Uber summarized its current method for investigating and resolving sexual misconduct and sexual claims.

#### CPED

CPED states that it does not have specific standards to recommend for TNCs to develop and maintain, but that the Commission should require that all TNCs follow their investigation procedures and codify this expectation in a General Order that could state, for example: "each TNC shall establish procedures for investigating all reports of Sexual Assault/Sexual Harassment claims, to determine the facts, what corrective action to take, and minimizing the possibility of recurrence."

#### **2.3.2. Discussion**

The Commission agrees that it would be beneficial if the settlement funds from D.21-12-003 are allocated to hiring a consultant to perform an evaluation of the TNC industry's existing protocols and practices and evaluate industry-wide best practices. But while that process will be helpful in ensuring that all TNCs are following the same best practices in investigating sexual assault and sexual harassment claims, we believe that there are certain minimum investigative

requirements that each TNC should be following now, which can be refined later after the retained consultant(s) complete(s) the industry-wide evaluation.

As Uber points out, there are existing models for investigating claims that exist outside the sexual assault and sexual harassment context that provide a helpful baseline for what a TNC should do when it is presented with an assault (sexual or otherwise) or harassment (sexual or otherwise) claim. In viewing these models, including those that have been developed for investigations of claims arising from the workplace, the Commission concludes that, at a minimum, each TNC must adhere to the following requirements:

The claims investigation process

- Each TNC shall have a written claims investigation manual which sets forth how the TNC will investigate and resolve each claim.
- The written claims investigation manual must include the requirement that claims should be responded to in a timely manner once the TNC has been made aware that a claim has been made.
- The written claims investigation manual must include the steps for conducting a complete analysis of the claim.
- The written claims investigation manual must include the steps for conducting interviews with the claimant and any witnesses to the claim.
- The person(s) conducting the investigation of the claim must document (in writing or electronically) the results of each step of the investigation, including any claimant and witness statements.
- The written claims investigation manual must include steps for interviewing the driver named in the claim.
- The conclusions reached regarding the claim must be documented (in writing or electronically).

- Any appropriate action taken as a result of the conclusions reached regarding the claim must be documented (in writing or electronically).

#### Selecting the claims investigator

- The investigator should be trained in investigating sexual assault and sexual harassment claims.
- The persons conducting the investigation must be sensitive to the privacy interests of the claimants and conduct their investigations in a manner that does not traumatize the claimants.
- If the investigator is already employed by the TNC, the investigator must not have any personal involvement with any of the parties who are part of the investigation.
- Depending on the nature of the allegations, and to avoid the appearance of influence or bias, it may be necessary for a TNC to retain an outside third-party that is independent from the TNC to conduct the investigation.
- The selected investigator must be able to make credibility assessments of the claimant, alleged perpetrator, and any witnesses interviewed.

#### Questions to ask the claimant

- Who committed the act?
- What exactly occurred or was said?
- When did it occur?
- Where did it occur?
- Was it a single act or multiple acts?
- How did the act(s) affect you?
- How did you react?
- What response did you make when the incident occurred or afterwards?
- Are there any notes, physical evidence, or other documentation regarding the incident?

- How would you like to see the situation resolved?

Questions to ask the alleged perpetrator

- What is your response to the allegations?
- If the perpetrator claims that the allegations are false, ask why the claimant would allegedly fabricate a story.
- Are there any persons who have relevant information?
- Are there any notes, physical evidence, or other documentation regarding the incident?

Questions to ask third parties

- What did you see or hear?
- When did this occur?
- What did the complainant tell you?
- When did the complainant tell you this?

These questions may be supplemented or modified depending on the advice each TNC receives from its consultant or from Commission staff.

**2.4. What Reporting Requirements, if any, Should the Commission Adopt that TNCs Must Follow Regarding Claims of Assault, Harassment, Sexual Assault, and Sexual Harassment?**

**2.4.1. Comments**

Lyft

Lyft states that since the Commission already requires TNCs to disclose information concerning reports of assault or harassment on the platform, Lyft does not believe that additional reporting is warranted. But to ensure complete and consistent reporting of data, Lyft recommends that the Commission require TNCs to utilize the RALIANCE taxonomy in reporting incidents. Lyft also recommends that the Commission review and refine current data fields with input from the TNCs. Specifically, Lyft recommends that the following data fields be revised: (1) "AssaultHarassDescr" should be removed as being duplicative of

the information required by “AssaultHarassType;” (2) “ComplaintResolveDescr” should be removed as Lyft already provides a high-level explanation concerning how an incident was resolved; (3) “DriverConsequence” and “DriverCurrentAuth” are superfluous as Lyft already provides this information as part of its high-level explanation of how an incident was resolved.

Finally, Lyft claims that it is unable to provide complete and accurate information (*i.e.* latitude, longitude, zip code, census tract, and census block details for each report) regarding assaults and harassment as Lyft has no way of identifying precisely when a reported incident takes place during a ride. As such, Lyft should only be required to report the passenger pickup and drop off location.

### **Uber**

Uber states that the TNCs should report the same data, in the same format, and with the same privacy protections that the Commission adopted for Uber in D.21-12-003.

### **CPED**

CPED states that TNCs should include both qualitative and quantitative data in their Annual Reports that comprehensively report on the status of their anti-sexual assault and sexual harassment program. At a minimum, the data should include the number of drivers trained by month, the number of assault and harassment claims reported monthly to the TNC, the nature of the claims, and the geographic location by city and neighborhood. The data should also indicate whether there have been any repeated claims against a particular driver.

### **2.4.2. Discussion**

The Commission does not believe it is necessary to modify the reporting requirements for assaults, harassment, sexual assaults, and sexual harassment

that currently exist in the operative reporting template that Commission staff has developed. The templates have evolved over time based on data received and information learned about TNC operations, and Commission staff have been diligent in updating the templates as needed. As such, we leave it up to staff to determine if the reporting categories are, in fact, duplicative and if some categories should be eliminated or revised in the future.

In the event Commission staff wants to conduct any follow up investigation with a TNC regarding any of the sexual assault or sexual harassment claims reported in its Annual Reports, the Commission agrees that the reporting requirements that it adopted in D.21-12-003 should be adopted and applied to all TNCs operating in California. That language, contained in Section C of the Settlement Agreement attached to D.21-12-003, is modified and set forth below:

Each TNC shall ensure that, for any incident of sexual assault or sexual harassment that has been reported to the TNC, the TNC will offer witnesses involved in such incidents (including survivors) an opportunity to “opt-in” in writing to consent to be contacted by the Commission. Witnesses will be able to opt-in or withdraw that consent at any time. Each TNC shall submit to CPED the names and contact information for witnesses that have opted-in upon CPED request and such information may be accompanied by a claim of confidentiality pursuant to G.O. 66-D. CPED agrees to notify the TNC via email before it contacts any such witnesses. CPED agrees to allow the TNC a reasonable period of time to coordinate with organizations, such as RAINN, on any anticipated CPED contact of witnesses.

### **3. Comments on Proposed Decision**

The proposed decision of Commissioner Shiroma in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of

Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

#### **4. Assignment of Proceeding**

Genevieve Shiroma is the assigned Commissioner and Robert M. Mason III and Debbie Chiv are the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. TNCs are required to include sexual assault and sexual harassment claims as part of the information provided in their Annual Reports to the Commission.
2. Taxonomy is a standardized set of terminologies, definitions, language, and references.
3. TNCs have not been using consistent taxonomies for sexual assault and sexual harassment.
4. TNCs have not been reporting sexual assault and sexual harassment claims consistently in their Annual Reports.

#### **Conclusions of Law**

1. It is reasonable to conclude that TNCs should be using the same taxonomies for sexual assault and sexual harassment in reporting such claims in their Annual Reports.
2. It is reasonable to conclude that TNCs should be using the same baseline standards for training TNC drivers about what constitutes sexual assault and sexual harassment.
3. It is reasonable to conclude that TNCs should be using the same baseline standards for investigating sexual assault and sexual harassment claims made against TNC drivers.

4. It is reasonable to conclude that TNCs should be using the same baseline standards for reporting sexual assault and sexual harassment claims in their Annual Reports.

## O R D E R

**IT IS ORDERED** that:

1. The Commission adopts the following definition of sexual assault:

- An act by a person who touches or attempts to touch the intimate parts of another (*e.g.* sexual organs, mouth, etc.); and
- The touching or attempted touching is against the will of the person being touched.

The following is a non-exhaustive list of the types of conduct that must be reported by all Transportation Network Companies as examples of sexual assault:

- Attempted touching of a non-sexual body part. "Sexual body parts" are defined as the mouth, female breasts, buttocks, or genitalia. The phrase "between the legs" is considered to reference a sexual body part. All other body parts are characterized as non-sexual.
- Attempted kissing of a non-sexual body part.
- Attempted touching of a sexual body part.
- Attempted kissing of a sexual body part.
- Non-consensual touching of a non-sexual body part.
- Non-consensual kissing of a non-sexual body part.
- Attempted non-consensual sexual penetration.
- Non-consensual touching of a sexual body part.
- Non-consensual kissing of a sexual body part.
- Non-consensual sexual penetration.

2. The Commission adopts the following definition of sexual harassment:

- An act by someone who engages in



- unwelcome visual, verbal, nonverbal, or physical conduct (either a single act or multiple acts),
- based on sex (*i.e.* gender),
- which creates an intimidating, hostile, or offensive environment to a reasonable person.

The following is a non-exhaustive list of the types of conduct that must be reported by all Transportation Network Companies as examples of sexual harassment:

- Comments about or asking personal questions (which would include questions about the user's personal life, home address, contact information, romantic or sexual preferences).
- Comments about or gestures regarding appearance.
- Flirting.
- Explicit sexually suggestive gestures.
- Explicit sexually suggestive comments.
- Displaying of indecent material.
- Displaying Indecent photography/video without consent.
- Soliciting a sexual act.
- Masturbation or engaging in acts of indecent exposure.
- Turning general conversations into conversations regarding sex.
- Verbal threats of a sexual nature.

3. The Commission adopts the following baseline standards for training Transportation Network Company (TNC) drivers regarding sexual assault and sexual harassment:

- Each TNC must develop a training program on its own or in partnership/consultation with a recognized expert in the field of sexual assault and sexual harassment, that is accessible either in person, on a computer, or mobile device.

- As for the sexual assault component of the training, the course shall, at a minimum, instruct on the definition of sexual assault and the various examples of conduct that can constitute sexual assault.
- As for the sexual harassment component of the training, the course shall cover the definition of unlawful sexual harassment under the FEHA and Title VII of the Civil Rights Act of 1964 and provide examples of the types of conduct that constitute sexual harassment.
- As part of its sexual assault and sexual harassment training, each TNC must also adopt gender identity training as required by Senate Bill 396.
- Each TNC shall also provide written policies (either in hard copy or electronic form) for preventing sexual assault and sexual harassment to each of its TNC drivers.
- Each TNC's training program shall be operational within 60 days from the adoption of this decision.
- All TNC drivers shall have completed the training within 120 days from the adoption of this decision.
- Each TNC shall provide a copy of the current version of its training program and written policies to the Commission upon request.
- The training and written policies must be available in English, and may also be available in (but not limited to) Spanish, Korean, Chinese, Russian, Tagalog, and Vietnamese.
- Each TNC driver must complete and pass the training annually.
- Each TNC driver must receive a certificate of completion, with a copy going to TNC for whom the driver provides TNC transport through that TNC's app. Each TNC shall maintain the certificates of completion for each driver providing TNC transport. For drivers no longer subscribing to the TNC's app, the TNC shall maintain the certificates of completion for two years.

4. Transportation Network Companies may supplement the training standards adopted by this decision after consulting with experts in the field of sexual assault and sexual harassment.

5. The Commission adopts the following baseline standards for Transportation Network Companies (TNCs) to follow when investigating sexual assault and sexual harassment claims:

The claims investigation process.

- Each TNC shall have a written claims investigation manual which sets forth how the TNC will investigate and resolve each claim.
- The written claims investigation manual must include the requirement that claims should be responded to in a timely manner once the TNC has been made aware that a claim has been made.
- The written claims investigation manual must include the steps for conducting a complete analysis of the claim.
- The written claims investigation manual must include the steps for conducting interviews with the claimant and any witnesses to the claim.
- The person(s) conducting the investigation of the claim must document (in writing or electronically) the results of each step of the investigation, including any claimant and witness statements.
- The written claims investigation manual must include steps for interviewing the driver named in the claim.
- The conclusions reached regarding the claim must be documented (in writing or electronically).
- Any appropriate action taken as a result of the conclusions reached regarding the claim must be documented (in writing or electronically).

Selecting the claims investigator.

- The investigator should be trained in investigating sexual assault and sexual harassment claims.
- The persons conducting the investigation must be sensitive to the privacy interests of the claimants and conduct their investigations in a manner that does not traumatize the claimants.
- If the investigator is already employed by the TNC, the investigator must not have any personal involvement with any of the parties who are part of the investigation.
- Depending on the nature of the allegations, and to avoid the appearance of influence or bias, it may be necessary for a TNC to retain an outside third-party that is independent from the TNC to conduct the investigation.
- The selected investigator must be able to make credibility assessments of the claimant, alleged perpetrator, and any witnesses interviewed.

Questions to ask the claimant.

- Who committed the alleged act?
- What exactly occurred or was said?
- When did it occur?
- Where did it occur?
- Was it a single act or multiple acts?
- How did the act(s) affect you?
- How did you react?
- What response did you make when the incident occurred or afterwards?
- Are there any notes, physical evidence, or other documentation regarding the incident?
- How would you like to see the situation resolved?

Questions to ask the alleged perpetrator.

- What is your response to the allegations?

- If the perpetrator claims that the allegations are false, ask why the claimant would allegedly fabricate a story.
- Are there any persons who have relevant information?
- Are there any notes, physical evidence, or other documentation regarding the incident?

Questions to ask third parties.

- What did you see or hear?
- When did this occur?
- What did the complainant tell you?
- When did the complainant tell you this?

6. Transportation Network Companies may supplement the investigation standards adopted by this decision after consulting with experts in the field of sexual assault and sexual harassment or after consulting with Commission staff.

7. The Commission orders all Transportation Network Companies (TNCs) to continue complying with the requirement to report sexual assault and sexual harassment claims in their Annual Reports. Commission staff may supplement or modify those reporting requirements as needed and shall notify each TNC of such changes in writing.

8. Commission staff may supplement and/or modify the standards for reporting sexual assault and sexual harassment claims in the Annual Reports.

9. In the event Commission staff wants to conduct any follow up investigation with a Transportation Network Company (TNC) regarding any of the sexual assault or sexual harassment claims reported in its Annual Reports, the Commission agrees that the reporting requirements that it adopted in Decision 21-12-003 shall be adopted and applied to all TNCs operating in California as follows:

Each TNC shall ensure that, for any incident of sexual assault or sexual harassment that has been reported to the TNC, the TNC will offer witnesses involved in such incidents (including survivors) an opportunity to “opt-in” in writing to consent to be contacted by the Commission. Witnesses will be able to opt-in or withdraw that consent at any time. Each TNC shall submit to CPED the names and contact information for witnesses that have opted-in upon CPED request and such information may be accompanied by a claim of confidentiality pursuant to G.O. 66-D. CPED agrees to notify the TNC via email before it contacts any such witnesses. CPED agrees to allow the TNC a reasonable period of time to coordinate with organizations, such as RAINN, on any anticipated CPED contact of witnesses.

10. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.