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On December 19, 2016, the Department of Labor (“DOL”) issued final regulations updating the nondiscrimination, equal employment opportunity, and affirmative action regulations that were last revised in 1978. Apprenticeship programs will be required to update their non-discrimination pledge, equal employment opportunity internal procedures, and affirmative action plan. The updates to the regulations become effective on January 18, 2017, but compliance deadlines for the updates differ and are set forth in the sections below. The regulations apply to all sponsors of apprenticeship registered with the U.S. Department of Labor or State Apprenticeship Agency.

Most Urgent Next Steps:

The following items should be a sponsor’s first priority in order to meet the compliance deadline of **July 17, 2017**. These items are discussed more in depth below.

1. Update your nondiscrimination pledges and any necessary documentation containing the pledges (standards, affirmative action plan, notice of openings, etc.).
2. Designate an individual to be responsible for the equal opportunity standards (usually the Coordinator).
3. Develop internal procedures to be followed for equal opportunity standards, including communication to journeyworkers and employers regularly engaged with the program.
4. Implement nondiscrimination and harassment policies and training, including with journeyworkers and employers regularly engaged with the program.
5. Develop a list of recruitment sources with contact information (women, minorities and disabled).
6. Develop a process to maintain medical records of apprentices in separate confidential medical files.

Table 1: New Enrollments in Registered Apprenticeship by Sex and Fiscal Year, All Industries¹

Fiscal Year	Female (%)	Male (%)
2013	6.7	93.3
2014	6.7	93.3
2015	7.1	92.9
10 Year Average	7.1	92.9

Why the Need for a Change?

The DOL analyzed participant demographics in apprenticeship programs in construction and non-construction industries to the demographics of the national labor force. The DOL concluded that women and minorities continue to face substantial barriers to entry into and completion of registered apprenticeships despite their availability in industry sectors covered by apprenticeship programs.ⁱ For instance, women make up 46.8% of the labor force but are only 7.1% of the new enrollments in registered apprenticeship programs for 2015.ⁱⁱ See Table 1.

Disparities between male and female enrollment in the construction trades apprenticeship programs are even more prevalent with only 2.8 percent of women enrolled in fiscal year 2015.ⁱⁱⁱ Similarly, minorities show lower percentages entering apprenticeship programs than the overall workforce. See Table 2.

Table 2 – New Enrollments in Registered Apprenticeship by Race and Ethnicity in FY 2015 – Construction Only¹

	White share (%)	Black or African American share (%)	Other race share (%)	Hispanic share (%)
Construction	62.4	8.8	7.2	21.2
CPS Share of Labor Force	78.8	12.3	9.0	16.6

Besides just women and minorities, the DOL strongly believes people with disabilities should be included in the apprenticeship program’s affirmative action efforts since individuals with disabilities experience high levels of unemployment. The DOL cites data from the Bureau of Labor Statistics showing 30.5 percent of working-age individuals with disabilities were in the labor force in 2015 compared to 76.1 percent of working-age individuals with no disability.^{iv} The DOL does not have data to show the representation of disabled individuals in apprenticeship programs. Due to the disparities for women, minorities and the disabled, the DOL updated the equal employment opportunity regulations and affirmative action plans for apprenticeship programs.

Update to Nondiscrimination Pledge

The DOL expanded the categories upon which discrimination is unlawful in an apprenticeship program for activities such as recruitment, selection, placement, rates of pay, hours of work, and job assignments. The DOL added the categories of age, disability, sexual orientation (including pregnancy and gender identity) and genetic information.^v A program’s nondiscrimination pledge will likely appear in the apprenticeship agreement, standards, and notice of openings for the program. **All apprenticeship programs will need to update their pledge on nondiscrimination to add these categories by July 17, 2017.**

The pledge will now read:

[Name of sponsor] will not discriminate against apprenticeship applicants or apprentices based on race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, genetic information, or because they are an individual with a disability or a person 40 years old or older. [Name of sponsor] will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, part 30.

Update to Internal Procedures and Training for Equal Opportunity Standards

The final regulations implement several additional procedures an apprenticeship program will need to take to monitor its nondiscrimination and equal opportunity standards. The material changes to note are the designation of an individual to be responsible and implementation of harassment and discrimination training. **Program sponsors will have until July 17, 2017 to implement the following:**

Sponsors relationship with contributing employers:

The JATC board of trustees needs to start planning on how the JATC will educate, train and enforce the equal opportunity policy and nondiscrimination and harassment procedures with contributing employers and journeyworkers that regularly oversee apprentices.

1. Designate an Individual to be Responsible

Sponsors will be required to designate an individual to be responsible and accountable for overseeing the development of the sponsor's affirmative action program, such as an apprenticeship coordinator.^{vi} The duties of the individual include monitoring all apprenticeship activity to ensure compliance with the nondiscrimination and affirmative action obligations, maintaining records, and generating and submitting reports to the Registration Agency as required by the regulations.^{vii}

2. Develop Internal Procedures

Apprenticeship sponsors will be required to develop internal procedures to communicate its equal opportunity and affirmative action obligations to apprentices, applicants for apprenticeship, and individuals involved with the administration and operation of the apprenticeship program. **The apprenticeship program must require individuals connected with the administration and operation of the program to aid the sponsor in meeting its nondiscrimination and affirmative action obligations, including journeyworkers and employers regularly working with apprentices. The DOL is holding the sponsors ultimately responsible for ensuring compliance with these obligations.** For sponsors that are not the employer of apprentices, the DOL expects apprenticeship sponsors "to take action to address discrimination with employers and, if unremedied, take steps to terminate its relationship with the discriminating employer."^{viii}

Part 30.3 identifies specific minimum activities that a sponsor must undertake to satisfy the obligation to distribute internally the sponsor's equal opportunity policy.

The activities include (a) publishing the equal opportunity pledge in apprenticeship standards and appropriate publications; (b) posting the pledge on bulletin boards, including through electronic media, accessible to apprentices and applicants for apprenticeship; (c) conducting orientation and periodic information sessions for apprentices and all individuals connected with the administration and operation of the program, including journeyworkers that regularly work with apprentices to inform and remind them of the pledge; and (d) maintaining records necessary to demonstrate compliance with this requirement.^{ix}

3. Update Outreach and Recruitment Efforts

A sponsor will be required to confirm its outreach and recruitment efforts for apprentices extend to all persons available and qualified for apprenticeship within the sponsor's recruitment area.^x Sponsors will be required to develop **annually** a list of recruitment sources that will generate referrals from all demographic groups, including women, minorities, and individuals with disabilities, with contact information for each source. The program will need to notify these sources in advance of any apprenticeship opportunities, with 30-day advance notice being preferred.^{xi}

4. Develop Nondiscrimination and Harassment Procedures and Required Training

A sponsor will need to develop and implement procedures to ensure its apprentices are not harassed because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability and the program is free from intimidation and retaliation. To accomplish this, sponsors will be required to (a) communicate to all individuals that harassing conduct will not be tolerated; (b) provide anti-harassment training to all individuals connected with the administration and operation of the program, including all journeyworkers that regularly work with apprentices. This cannot be a mere transmittal of information but must include participation by trainees (in person or interactive online); (c) make all facilities and apprenticeship activities available without regard to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, and disability; and (d) establish and implement procedures for complaints about harassment and discrimination.^{xii} A sponsor will be responsible for addressing any violations of these procedures by employers participating in the sponsor's program.

Affirmative Action Restructuring

The premise underlying an affirmative action program is that absent discrimination, a sponsor's apprenticeship program generally will reflect the sex, race, ethnicity, and disability profile of the labor pools from which the sponsor recruits and selects. Sponsors should already have an affirmative action plan in place and will need to update their affirmative action programs pursuant to the final regulations by January 18, 2019.

Training:

The JATC must provide anti-harassment training to all staff, board of trustees, and journeyworkers regularly connected with the apprentices. The training must be in person or interactive online.

Just providing information will NOT work.

Sponsors will be required to develop and maintain an affirmative action program with internal auditing and reporting systems to use as a means of measuring the sponsor's progress towards an apprenticeship program that will match the general labor pool from which the program recruits and selects.^{xiii} A sponsor with fewer than five (5) apprentices registered will be exempt from these requirements.^{xiv} The DOL will be providing a Model Written affirmative action plan for sponsors to review. The Registration Agency may request to see the sponsors affirmative action plan, especially during the Registration Agency's compliance review. The affirmative action program will need to be a written plan and must include:

1. Utilization Analysis and Goal Setting for Race, Sex and Ethnicity

Programs will be required to assess whether the program is reflective of the population available for apprenticeship in the sponsor's relevant recruitment area. When a disparity exists between availability and the actual representation in the sponsor's apprenticeship program, the sponsor will be required to establish a utilization goal.^{xv}

The sponsors will need to identify the racial, sex, and ethnic composition of its program grouped by occupational titles.^{xvi} Then, the sponsor must determine the availability of qualified individuals for apprenticeship by race, sex, and ethnicity within that occupation in the relevant recruitment area to be used as a benchmark to compare the apprenticeship program.^{xvii} Sponsors will work with the Registration Agency to conduct availability analysis at each compliance review.

If the program is underutilized compared to availability in the industry for women, ethnic, and/or racial minority groups, sponsors will be required to establish utilization goals.^{xviii} The utilization goals will be established for each racial, gender, or ethnic group that the sponsor finds is underutilized in an industry.^{xix}

2. Utilization Analysis and Goal Setting for Individuals with Disabilities

This is a completely new requirement. Instead of establishing utilization goals based on the industry as set forth above, a national utilization goal of seven percent (7%) for individuals with disabilities will be used for each major occupation group. If the program utilization rate falls below seven percent (7%), the sponsor must take specific measures to address this disparity.^{xx}

The regulations rely on voluntary self-identification by the individual apprentices to determine the disability rates. Sponsors will need to request self-identification when (a) an applicant is considered for apprenticeship; (b) after an applicant is accepted into the program but before they start their apprenticeship; and (c) after they are enrolled in the program.^{xxi} Once self-identified, the apprentice will need to request a reasonable accommodation, if necessary, or the sponsor will need to provide a reasonable accommodation if the need is clear. The sponsor will also need to keep obtained

***Disability Now
Required:***

JATC programs must strive to utilize 7% of the program for individuals with disabilities.

Applicants and apprentices will be required to self-identify their disability to the JATC for the JATC to track compliance.

medical information in separate medical files and treat as confidential.^{xxii} If the utilization rates are below seven percent (7%), the sponsor must take steps to determine whether impediments to equal opportunity exist.

3. Targeted Outreach, Recruitment and Retention Activities

Sponsors will need to establish targeted outreach, recruitment and retention activities if a sponsor finds underutilization for a specific group set forth above.^{xxiii} The outreach, recruitment and retention must be set forth in the affirmative action plan. As part of the retention efforts, the sponsor is encouraged to evaluate any barriers to equal opportunity in apprenticeship. The sponsors may look to (a) use of journeyworkers and apprentices from the underutilized groups to help with the affirmative action program; (b) use of journeyworkers and apprentices from the underutilized groups to serve as mentors and assist with the targeted outreach and recruitment; and (c) conducting exit interviews with each apprentice leaving the program prior to graduation to determine why they are leaving to help shape retention efforts.^{xxiv}

4. Review of Personnel Processes

The sponsor will be required to review its personnel processes on an annual basis as part of the affirmative action program and make any necessary modifications to ensure compliance.^{xxv} A description of how this review is conducted will need to be included in the affirmative action plan.

A program sponsor failing to meet the utilization goals, by itself, will not result in an enforcement action or sanctions by the Registration Agency.^{xxvi} The Registration Agency will look at all of a sponsor's efforts in this area to analyze compliance. If the goals are not being met, the sponsor will need to show its good faith efforts to remove any impediments to equal employment opportunity to comply with the regulations.

Other Changes

The final regulations also provide more flexible selection procedures, allowing sponsors to select apprentices through any selection method provided in the regulations as long as it does not discriminate.^{xxix} The regulations update set response timeframes to be followed if a compliance review is conducted on a sponsor by the Registration Agency and the Registration Agency notes deficiencies in the program. The regulation regarding apprentice compliant procedures were revised to eliminate the use of private review bodies. This change would require all apprentice complaints to be filed with the Registration Agency.

ⁱ Apprenticeship Programs; Equal Employment Opportunity, 81 Fed. Reg. 243, 92026.

ⁱⁱ Apprenticeship Programs; Equal Employment Opportunity, 81 Fed. Reg. 243, 92026, Current Population Survey and Query of RAPIDS database – May 2016.

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- iii Apprenticeship Programs; Equal Employment Opportunity, 81 Fed. Reg. 243, 92026, Query of RAPIDS database – May 2016.
- iv Apprenticeship Programs; Equal Employment Opportunity, 81 Fed. Reg. 243, 92026.
- v 29 CFR §§ 29.7 and 30.1.
- vi 29 CFR § 30.3.
- vii *Id.*
- viii Apprenticeship Programs; Equal Employment Opportunity, 81 Fed. Reg. 243, 92026, 92043-92044.
- ix 29 CFR § 30.3.
- x *Id.*
- xi *Id.*
- xii 29 CFR § 30.3.
- xiii 29 CFR § 30.4.
- xiv *Id.*
- xv 29 CFR §§ 30.5 and 30.6.
- xvi 29 CFR § 30.5.
- xvii *Id.*
- xviii 29 CFR § 30.6.
- xix *Id.*
- xx 29 CFR § 30.7.
- xxi 29 CFR § 30.11.
- xxii 29 CFR § 30.12.
- xxiii 29 CFR § 30.8.
- xxiv 29 CFR § 30.8.
- xxv 29 CFR § 30.9.
- xxvi FAQs: Apprenticeship EEO Final Rule, 5 (Dep't of Labor December 2016).
- xxvii *Id.*
- xxviii *Id.*
- xxix 29 CFR § 30.10.

Disclosure

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