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## Executive Summary

This JATC Bulletin contains several articles covering the most urgent steps apprenticeship programs need to take to comply with the December 19, 2016, revisions to the apprenticeship regulations.<sup>1</sup> Each of the updates discussed in this JATC Bulletin must be implemented by **July 17, 2017**.

The following items should be a sponsor's priority to meet the compliance deadline of **July 17, 2017**. Each of these items are discussed more in depth in this JATC Bulletin.

1. Develop internal procedures to be followed for equal opportunity standards, including designating an individual to be responsible for the equal opportunity standards (usually the Training Coordinator). Your procedures should also cover how the following items #2-4 will be handled by the program.
2. Update your nondiscrimination pledges, any necessary documentation containing the pledges (standards, affirmative action plan, notice of openings, etc.), and complaint procedures to be followed and distribute to all applicants and apprentices in writing.
3. Implement nondiscrimination and harassment policies and training, including with journeyworkers and employers regularly engaged with the program.
4. Develop a list of recruitment sources with contact information.
5. Develop a process to maintain medical records of apprentices in separate confidential medical files.

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<sup>1</sup> 29 CFR §§ 29 and 30.

## Develop Equal Opportunity Procedures and Follow Them

The Federal Regulations governing registered apprenticeship programs, 29 CFR §30.3, requires each registered apprenticeship program to develop equal opportunity standard internal procedures to be followed. Each program should make sure they have internal procedures in place and, if already in place, update them, if necessary, to conform with the new regulations.

At a minimum, the internal procedures should cover the following:

- Discrimination that is prohibited;
- The name of the individual responsible for overseeing the equal opportunity procedures;
- How the equal opportunity pledge and compliant procedures will be disseminated and posted throughout the program (discussed further in [Update Your Nondiscrimination Pledges!](#) article later in this Bulletin);
- How the program will perform and record its universal recruitment and outreach (discussed further in [Pay Attention to Your Outreach and Recruitment Sources!](#) later in this Bulletin); and
- How the program will develop and disseminate its harassment and discrimination policy and perform required training (discussed further in [Tips for Drafting Your Harassment and Discrimination Policy and Conducting Training](#) article later in this Bulletin).

The first two items mentioned above, discrimination that is prohibited and the responsible party for overseeing the procedures, is discussed more in depth in this article.

### Discrimination Prohibited

The Department of Labor aimed to increase diversity in apprenticeship programs with its revisions to the equal opportunity standards for apprenticeships. As part of the revision, the equal opportunity procedures adopted by each program need to set forth the classifications that are protected from discrimination and examples of areas within the program where discrimination is prohibited.

Apprenticeship programs may not discriminate against an apprentice or applicant for apprenticeship on the basis of race, color, religion, national

origin, sex, sexual orientation, age (40 and older), genetic information or disability.

A program will not be able to discriminate in any of the following areas:

- Recruitment, outreach, and selection procedures;
- Hiring and/or placement, upgrading, periodic advancement, promotion, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- Rotation among work processes;
- Imposition of penalties or other disciplinary action;
- Rates of pay or any other form of compensation and changes in compensation;
- Conditions of work;
- Hours of work and hours of training provided;
- Job assignments;
- Leaves of absence, sick leave, or any other leave; and
- Any other benefit, term condition, or privilege associated with apprenticeship.

Apprenticeship sponsors should state in its procedures how it plans on disseminating information on the classifications protected and areas covered to applicants, apprentices, instructors, employers, and journeyworkers regularly engaging with apprentices.

## Designate Responsibility

The revised regulations require all registered apprenticeship programs to designate the individual (or individuals) that will be responsible and accountable for overseeing the equal opportunity standards and procedures. Many apprenticeship programs will likely look to their training coordinator to perform this function on behalf of the program.

This individual will need to monitor all discrimination and harassment in the program, maintain the records regarding the same and submit any reports to the Department of Labor's State Registration Agency, as requested. If the apprenticeship program selects its Training Coordinator to perform this function, the Training Coordinator will be the individual to initially receive any complaints, reports or inquiries regarding harassment or discrimination in the program and initially investigate any and all reports.

If you would like assistance in drafting your equal opportunity procedures, please contact Jennifer E. Germaine.

## Update Your Nondiscrimination Pledges!

Registered apprenticeship programs are required to adopt an equal opportunity pledge. This requirement was in place even before the December 19, 2016 revisions to the regulations. However, the equal opportunity pledge was updated by the revisions to the regulations to cover more classifications.

Apprenticeship programs must update the pledges located in their apprenticeship standards. Programs must also update any publications that include the pledge, such as apprentice and employee handbooks, policy manuals, newsletters or any other document disseminated by the JATC that describes the nature of the JATC. Programs will need to post this pledge in prominent areas accessible by apprentices, including on bulletin boards at the training facility and any bulletin boards that may exist for apprentices through electronic media. The program should also conduct orientation and periodic information sessions for all apprentices, journeyworkers and others involved with the program to inform and remind such individuals of the program's equal opportunity policy and pledge. The sample pledge language provided for in the regulations is as follows:

*[Name of program] 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 program] 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.*

Apprenticeship programs will need to provide written notice to all applicants and apprentices of their right to file a discrimination complaint and the procedures to follow in doing so. The notice must include the address, phone number, and other contact information for the Registration Agency that will receive and investigate complaints filed. This notice must be provided in the application for apprenticeship and must also be displayed in a prominent, publicly available location where all apprentices will see the notice. The notice must include the specific wording as set forth by the regulations.<sup>2</sup>

If you would like assistance in updating your program's pledge or notice of applicant's and apprentice's right to file a discrimination complaint, please contact Jennifer E. Germaine.

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<sup>2</sup> 29 CFR §30.14

# Tips for Drafting Your Harassment and Discrimination Policies and Conducting Training

Each apprenticeship program will need to ensure its apprentices are not harassed or discriminated because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability and to ensure that its apprenticeship program is free from intimidation and retaliation. To meet this requirement, an apprenticeship program should implement a policy and training to educate and discourage harassment and discrimination in the program.

## Develop a Harassment and Discrimination Policy

An apprenticeship program is responsible for acts of discrimination/harassment when it knows or should know of the conduct. Programs should develop and disseminate a policy encouraging individuals in the program or involved with the program to report acts of discrimination or harassment occurring in the apprenticeship program.

The policy should define both discrimination and harassment and provide examples of conduct that meets both definitions. The policy should include the procedure to be followed to report discrimination and harassment. It is recommended the individual responsible for overseeing the discrimination and harassment procedures be the main contact for all reports. The policy should state contact information for this individual. It is recommended to name a back-up contact in case the initial individual is involved in the harassment or discrimination.

It is recommended to offer a form to be completed to report an incident of discrimination or harassment, including the date/time of the incident, individuals involved, name and contact information of witnesses and a description of the incident. Once submitted, the individual responsible for overseeing the reporting should investigate the report. Care should be given to protect the anonymity of the employees and/or apprentices involved. The individual responsible for investigating will then recommend appropriate corrective action, as needed.

If the discrimination or harassment persists or the affected individual is not satisfied with the outcome recommended by the individual investigating, the policy should allow the individual to appeal the decision to the full board of trustees of the program. The policy should provide a timeline for when this appeal should be made after the initial investigator's decision is made and the timeline for when a decision should be issued by the board of trustees. Any decision by the board of trustees may be appealed to the Registration Agency within 300 days from the date of the alleged discrimination or harassment.

Apprentices may report acts of discrimination or harassment occurring on the jobsite to the apprenticeship program. The Department of Labor comments to the revised regulations mention apprenticeship programs are responsible for apprentices in the entire program, even when apprentices are on the job site. If discrimination or harassment is occurring on a jobsite, the apprenticeship program will need to investigate any allegations and may need to take disciplinary action against the employer involved if the discrimination or harassment continues. While an employer will be responsible for implementing their own discrimination and harassment policies, it is recommended for apprenticeship programs to mention in its own policy that an employer is responsible for actions of its employees or agents regarding harassment and discrimination, the employer should have its own policy in place and an employer may be subject to disciplinary action by the apprenticeship program if an apprentice reports discrimination and harassment from an employer's jobsite. Before invoking disciplinary action against an employer, an apprenticeship program should notify the employer of the infraction, provide reasonable opportunity for corrective action and request the employer to appear before the board of trustees of the program.

The policy should include prohibitions against retaliation, harassment or adverse consequences for anyone that makes a good faith complaint, report or inquiry under the policy or for anyone participating in the investigation. This protection should extend to any report made in good faith but proven to be mistaken. Apprenticeship programs should be encouraging individuals to report discrimination and harassment to dissuade such action from continuing in the program.

If you would like assistance in drafting your discrimination and harassment policy, please contact Jennifer E. Germaine.

**TIP:**  
Prohibit retaliation, harassment or adverse consequences for anyone that makes a good faith report in the policy.

Extend the same protections to anyone requested to participate in the investigation.

## Provide Anti-Harassment and Anti-Discrimination Training

To further dissuade harassment or discrimination in the program, the revised regulations are requiring anti-harassment training for all individuals connected with the administration or operation of the program, including all apprentice and journeyworkers who regularly work with apprentices. The regulations require the training to include participation, such as by an in-person training session or completing an interactive training online. Just providing information is not enough to meet the regulation's requirement.

The training must include definitions of harassment and discrimination and examples of each. It should be made clear that harassing conduct will not be tolerated, disciplinary action may occur and individuals have a right to file a complaint.

For training in Iowa, local civil rights commissions typically offer free training. It is recommended to contact a local civil rights commission in your area to inquire about training. Training can usually be tailored upon discussing the training needed with the civil rights commissions.

Contact information for the Cedar Rapids Civil Rights Commission and the Des Moines Civil & Human Rights Commission is as follows:

### **Cedar Rapids Civil Rights Commission**

50 2<sup>nd</sup> Avenue Bridge, 7<sup>th</sup> Floor

Cedar Rapids, IA 52401

Bernie Walther

[b.walther@cedar-rapids.org](mailto:b.walther@cedar-rapids.org)

319-286-5048

[http://www.cedar-](http://www.cedar-rapids.org/local_government/city_boards_and_commissions/trainings_offered_by_the_crcrc.php)

[rapids.org/local\\_government/city\\_boards\\_and\\_commissions/trainings\\_offered\\_by\\_the\\_crcrc.php](http://www.cedar-rapids.org/local_government/city_boards_and_commissions/trainings_offered_by_the_crcrc.php)

### **Des Moines Civil & Human Rights Commission**

602 Robert D. Ray Drive

Des Moines, IA 50309

[humanrights@dmgov.org](mailto:humanrights@dmgov.org)

515-283-4284

<https://www.dmgov.org/Departments/HumanRights/Pages/Education.aspx>

### **TIP:**

Contact a local civil rights commission to inquire whether free training can be provided to your program. The training can typically be tailored to your needs.

## Pay Attention to Your Outreach and Recruitment Sources!

Apprenticeship programs have always been required to implement outreach and recruitment efforts to extend its recruitment to all individuals in the programs recruitment area without regard to race, sex, ethnicity, or disability. It will become even more crucial for a program to regularly perform this function and maintain its records regarding this function.

The revised regulations are requiring affirmative action plans for registered apprenticeship programs to be updated and revised by 2019. The Registration Agencies have been tasked with aiding apprenticeship programs in bringing their affirmative action plans up-to-date within the next two years. As part of the updates, apprenticeship programs will be required to keep even more records on the classification of apprentices in the program and how specific outreach and recruitment efforts are being conducted. It is recommended to polish your outreach and recruitment efforts and recordkeeping now to be in a good habit for when the updated affirmative action plans become effective. The Registration Agencies may request you to provide them with documentation of the outreach and recruitment efforts of the program.

Annually, the program should develop and update a list of recruitment sources that will generate referrals to the program, such as public workforce systems career centers, local workforce investment boards, community-based organizations, and youth job-training programs. A contact person, mailing address, telephone number and email address should be kept for each referral source.

Apprenticeship programs should provide recruitment sources advance notice of any apprenticeship openings. This allows the referral sources to notify and refer candidates. It is recommended to provide 30 days' advance notice. Remember to include documentation of the apprenticeship program's equal opportunity pledge in all notices to recruitment sources.

The program will need to document its efforts and its outreach to all recruitment sources. The Registration Agency may request records on this function at any time.

**TIP:**  
Annually review and update your recruitment sources!

**TIP:**  
It is recommended to provide 30 days' advance notice of any opportunities available in the program to all recruitment sources. Make sure to document this step!



## The Ins and Outs of Medical Record Retention

The revised regulations will require self-reporting of disabilities to the apprenticeship program as part of the new affirmative action plans to be implemented in 2019. Due to the likelihood of increased medical records being provided to the program, the Department of Labor established increased confidentiality and protection over medical records.

The revised regulations implemented a new requirement for apprenticeship programs to keep any medical records of apprentices or applicants confidential and in separate files. Any information regarding the medical condition or history of an applicant or apprentice must be collected and maintained on separate forms (from any other required forms for the program) and in files separate from their apprenticeship files.

While not covered in the Federal Regulations for Apprenticeship Programs, 29 CFR 30, it is recommended to follow the same procedures for employees of the program. Keep any information relating to the medical condition or medical histories of employees in separate medical files from the employee's personnel file.

As needed, supervisors or managers may be informed about any necessary restrictions on work or duties of an applicant or apprentice and any necessary accommodations. This will likely occur due to a reasonable accommodation provided for an applicant or apprentice with a disability. First aid and safety personnel may also be informed, when appropriate, if the disability might require emergency treatment.

The treatment of applicants and apprentices with disabilities and when/how to provide reasonable accommodations to them will be an area of focus in the next couple of years due to the looming updates to the affirmative action plan suggesting apprenticeship programs achieve a 7% rate of disabled apprentices in the program.

**TIP:**

Keep all medical records for applicants, apprentices and employees confidential and in separate files from his/her apprentice or personnel file.

## Jennifer E. Germaine's Apprenticeship Article Featured in Benefits Magazine

Jennifer E. Germaine's article on *New Diversity Requirements for Apprenticeship Programs* was published in the April 2017 issue of **Benefits Magazine**. The article discusses the new regulations affecting apprenticeship programs released by the Department of Labor in December of 2016. The article highlights changes apprenticeship programs will need to make to comply with the new regulations and the effective dates for each change.

**Benefits Magazine** is a publication offered by the International Foundation of Employee Benefit Plans, which offers information and educational content in employee benefits and apprenticeship programs. If you are a member of the International Foundation of Employee Benefit Plans, you may find the article in the April 2017 edition.

## Disclosure

The information in this Bulletin is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. No attorney-client relationship has been or will be formed by any communication(s) to, from or with this JATC Bulletin. This JATC Bulletin is based on the most current information at the time it is written. Since it is possible that laws or other circumstances may have changed since publication, please call to discuss any action you may be considering as a result of reading this Bulletin.