

## CLIENT BULLETIN

### ***DOL Issues Final Equal Employment Opportunity in Apprenticeship Plans Regulations -***

#### ***First Update Since 1978 - Affects JATC Plans***

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The [Employer and Training Administration](#), an agency under the Department of Labor, recently released [final Equal Employment Opportunity](#) (EEO) regulations for apprenticeship programs under the National Apprenticeship Act of 1937 (aka "the Fitzgerald Act"). This law and these regulations affect multiemployer Joint Apprenticeship and Training Committee (JATC) programs and plans. These final regulations are the first update to the prior 1978 apprenticeship EEO regulations.

The current apprenticeship EEO regulations prohibited discrimination based on the basis of race, color, religion, national origin and sex. The updated regulations add prohibitions against: age (40 and older), genetic information, sexual orientation and disability. The regulations clarify that the DOL considers "sex discrimination" to include discrimination on the basis of pregnancy and gender identity. The final regulation also adds a number of new defined terms for consistency and clarity. A list of effective dates is found at the end of this *Client Bulletin*.

A number of very useful aids are available that help understand the changes: an [implementation timeline](#), a [crosswalk](#) highlighting the differences between the old and new regulation, an overall [Fact Sheet](#), a disability [Fact Sheet](#), a set of frequently asked questions ([FAQs](#)) and [other materials](#) (bottom of page). We have prepared a version of the final regulations with a Table of Contents (available by "[clicking here](#)"), as well as similarly formatted copy of the [FAQs](#) (available by "[clicking here](#)"). [Technical assistance](#) will be available this year.

The following review of the significant differences between the prior regulation and the final regulation is drawn from the *Preamble* and various information aids.

## **General Obligation For Affirmative Action To Provide Equal Opportunity**

The prior regulations included an obligation to "*take affirmative action to provide equal opportunity*," without guidance on how to comply. The final regulations clarify the four specific actions that apprenticeship plan sponsors (hereinafter just "sponsors") must take to fulfill this obligation. According to the *Preamble*, many of these actions are taken from the previous regulation or are otherwise current practices of sponsors. Broadly speaking, these four steps are:

- Designate an individual(s) to be responsible for overseeing the apprenticeship plan sponsor's commitment to equal opportunity;
- Distribute the sponsor's equal employment opportunity policy internally;
- Engage in outreach and recruitment efforts designed to extend to all persons available for apprenticeship without regard to race, sex, ethnicity or disability; and
- Maintain an apprenticeship program free from harassment, intimidation and retaliation.

## **Apprenticeship Outreach and Recruitment Obligations**

The prior regulation required outreach and recruitment as part of a sponsor's Affirmative Action Plan (AAP) and listed 10 activities, from which sponsors were required to undertake a "*significant number*." Under the final regulation, sponsors with *five or more* apprentices are required to maintain an AAP and must engage in *three* AAP outreach and recruitment activities.

These three required AAP outreach activities are:

- Develop and update a list of recruitment sources (examples in the final regulation);
- Identify a contact at each of these sources;
- Provide recruitment sources with advance notice of apprenticeship openings (preferably 30 days) so they can notify and refer candidates.

Sponsors that are required to maintain an AAP and that are underutilized in a particular group, must set utilization goals and undertake additional targeted outreach and recruitment activities, including:

- Sending information about apprenticeship opportunities to organizations serving the underutilized group(s) (such as community based organizations; local high schools, community colleges, and vocational, career and technical schools; and One Stop Career Centers);
- Advertising apprenticeship opportunities in appropriate media;
- Cooperating with local school boards and vocational education systems to develop relationships with pre-apprenticeship programs targeting students from the underutilized group(s); and
- Establishing agreements or partnerships with appropriate organizations to recruit additional qualified individuals for apprenticeship.

### **Anti-Harassment Obligations**

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The prior regulations did not include any specific affirmative steps addressing anti-harassment, aside from the general prohibition against discrimination. The final regulations require the following actions to prevent harassment, including:

- Providing anti-harassment training to all individuals connected with the administration and operation of the apprenticeship program, including apprentices. The training should include: (1) a statement that harassing conduct will not be tolerated; (2) a definition of harassment; (3) types of conduct that constitute unlawful behavior and (4) information on how to file a complaint alleging harassment
- Making all facilities and apprenticeship activities available without regard to any of the protected traits; and
- Establishing and implementing procedures for handling and resolving complaints.

### **Scope of and Review Schedule for the AAP**

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Under the prior regulation, an affirmative action plan covered race, sex, and ethnicity and required sponsors to establish procedures for handling and resolving complaints. The final regulations add "disability" to the requirements of an AAP. Although plan "personnel processes" must be reviewed *annually*, all other elements of the AAP have a longer time between required updates. Refer to the [Compliance Timeline](#) for more detail.

### **Race/Sex/Ethnicity Analysis and Utilization Goals Required In The AAP**

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The prior regulation required sponsors to:

- Conduct a utilization analysis (comparing the incumbent apprenticeship workforce to the availability in the sponsor's labor market) for minorities and women to determine if deficiencies in its program existed;
- Set utilization goals (and timetables for meeting those goals) for increasing utilization where needed; and
- Make good faith efforts to meet its goals and timetables (without further guidance on what specific activities constituted "good faith efforts.")

The final regulation keeps the same general structure with regard to race, sex and ethnicity analyses and goal-setting, with the following changes:

- Analyzing the workforce by occupation, and availability analyzed by major occupation group, using a common data source (RAPIDS/O\*NET) already familiar to many sponsors;
- Using a simpler utilization analysis considering two factors (rather than five in prior regulation) when analyzing availability;
- Defining the available population as "individuals who are eligible for enrollment in the apprenticeship program";

- Requiring analysis and goal-setting by individual race/ethnicity, rather than by “minorities” collectively;
- Registration Agencies will assist sponsors in completing their utilization analysis; and
- Undertaking a specific list of four targeted outreach, recruitment, and retention activities for those sponsors required to set utilization goals.

A “[Registration Agency](#)” is the [Office of Apprenticeship](#) or a recognized State Apprenticeship Agency that has responsibility for registering apprenticeship programs and apprentices, among other things.

### **Disability Analysis and Utilization Goals Required In The AAP**

Rules against discrimination on the basis of disability were not included in the prior regulation. The final regulation sets a utilization goal of 7% for employment of qualified individuals with disabilities as apprentices for each major occupation group within the apprenticeship program.

Sponsors are required to invite self-identification as an individual with a disability to applicants considered for apprenticeship (“pre-offer”) and to those entering the program (“post-offer”).

If the sponsor does not meet the utilization goal, it must take steps to determine if there are any barriers to EEO that might explain the failure to meet the goal. If so, the sponsor must take action, (including the targeted outreach, recruitment and retention actions listed above) to eliminate these impediments.

### **Selection Procedures**

The prior regulation required the apprenticeship plan sponsor to use one of four selection procedures, each of which included its own detailed set of requirements for compliance. The final regulation eliminates these four categories and instead allows sponsors to adopt any selection procedure(s) as long as they comply with established legal authorities, are uniformly and consistently applied, and are facially neutral in terms of the traits protected by the final rule (race, color, religion, national origin, sex, age, disability, sexual orientation, genetic information).

### **Compliance Reviews**

The prior regulation provided that the DOL will regularly conduct compliance reviews of apprenticeship programs and that sponsors seeking reregistration or new registration will be subject to a compliance review.

The final regulation provides further detail regarding how compliance reviews will be conducted, including how and when sponsors will be notified of compliance review findings. The new regulation also provides greater detail, including the timetables for responses and what a compliance action plan must include. For more details, see final regulation at Section 30.14.

## **Complaints**

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The prior regulation provided that apprentices or applicants for apprenticeship could file a complaint with the DOL or a private review body, setting time limits for doing so. The final regulation deletes provisions concerning private review bodies as all complaints are to be filed with the pertinent Registration Agency and requires that complaints must be filed within 300 days of the alleged unlawful act.

The final rule also requires that sponsors provide written notice to all applicants for apprenticeship and apprentices of their right to file a discrimination complaint with the Registration Agency, including the procedures for doing so and required wording for the notice. Other details in the complaint process are spelled out in the final regulations.

## **Recordkeeping**

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The record-keeping duties under the final regulation are more detailed. The requirement to maintain records for five years after the record was created or the personnel action involved, whichever occurs later, is unchanged.

Each sponsor must collect such data and maintain such records necessary to determine whether the sponsor has complied or is complying with the requirements of this final regulation. Such records must include, but are not limited to records relating to:

- Selection for apprenticeship, including applications, tests and test results, interview notes, bases for selection or rejection, and any other records required to be maintained under Uniform Guidelines of Employee Selection Procedures (UGESP) (see [41 CFR part 60-3](#));
- The invitation to self-identify as an individual with a disability;
- Information relative to the operation of the apprenticeship program, including but not limited to job assignments in all components of the occupation as required under the final regulation, promotion, demotion, transfer, layoff, termination, rates of pay, other forms of compensation, conditions of work, hours of work, hours of training provided, and any other personnel records relevant to EEO complaints filed;
- Compliance with the EEO requirements of the final regulation;
- Requests for reasonable accommodation; and
- Any other records pertinent to a determination of compliance with these regulations.

For any record the sponsor maintains as required under the final regulations, the sponsor must be able to identify the race, sex, ethnicity (Hispanic or Latino/non-Hispanic or Latino), and when known, disability status of each apprentice, and where possible, the race, sex, ethnicity and disability status of each applicant to apprenticeship and supply this information upon request to the Registration Agency.

Each sponsor required to develop and maintain an AAP must retain both the written AAP and documentation of its component elements of the AAP as set forth in the regulations.

The final regulation adds a *confidentiality and use of medical information* section. Under this section, any information obtained under the final regulation regarding the medical condition or history of an applicant or apprentice must be collected and maintained on separate forms and in separate medical files and *treated as a confidential medical record*.

However, supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or apprentice and necessary accommodations. Moreover such information may be disclosed to first aid and safety personnel if the individual might require emergency treatment. Government officials engaged in enforcing the final regulation or certain other government agencies must be provided relevant information upon request.

### **Conclusion**

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Apprenticeship training program sponsors will want to instruct the individuals responsible for implementing the EEO portion of the apprenticeship plan to review these regulations and aids as well as schedule tasks related to the compliance dates. Fortunately, the phased implementation dates will allow time for JATC funds to implement these EEO requirements.

## **Effective Dates**

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The [Implementation Timeline](#) listed the following compliance dates shown below. The relevant regulation section is shown in parenthesis.

### **On Effective Date (January 18, 2017)**

All obligations in the final rule that are not specifically listed below take effect on **January 18, 2017**. Some of those include: selection procedures (§30.10), recordkeeping (§30.12), compliance review/complaint procedures (§§30.13-14), sanctions (§30.15) and intimidation/retaliation protections (§30.17).

### **180 Days post-Effective Date (July 13, 2017)**

Non-discrimination/general affirmative action obligations in §30.3

- Refrain from discrimination, including new protected bases
- Update and disseminate EO pledge
- Begin universal outreach efforts
- Implement anti-harassment measures

### **2 Years post-Effective Date (January 18, 2019)**

- By 2 year mark, disseminate one-time invitation to self-identify (ID) for all current apprentices, begin self-ID at pre and post stage (§30.11)
- Begin invitations to self-ID at pre-offer and post-offer stage (§30.11)
- Conduct initial workforce analysis for race/sex (§30.5(b)) and individuals with disabilities (§30.7(d)(2))
- Conduct initial review of personnel processes (§30.9)
- Draft written AAP (§30.4(e))

### **At First Compliance Review After Effective Date (whenever that occurs)**

- Conduct utilization analysis for race/sex (w/ RA assistance) (§30.5(c))
- If data shows underutilization for sex, minority group, or IWDs, set utilization goal (§§30.6, 30.7)

### **Upon Finding of Underutilization and Utilization Goal Being Set**

- For IWD, determine whether impediments to EEO exist (considering outreach/recruitment and review of personnel processes); if so, undertake action-oriented programs in §30.8
- For race/sex, undertake action-oriented programs in §30.8

Page 2 of the Implementation Timeline has a Schedule of Recurring Obligations.

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