

LCB File No. R082-04

**PROPOSED REGULATION OF THE
STATE APPRENTICESHIP COUNCIL**

AUTHORITY: §§1-11, NRS 610.090

Section 1. Chapter 610 of NAC is hereby amended by adding thereto the provisions set forth as sections 2-5 of this regulation.

Sec. 2. If the council determines there is reasonable cause to conclude that a dismissal of an apprentice pursuant to NAC 610.460 was based upon discrimination in violation of NAC 610.530, the council will refer the apprentice to the Nevada Equal Rights Commission and continue the hearing required pursuant to NAC 610.461 until such time the Nevada Equal Rights Commission has disposed of the matter. Nothing in this section shall prevent an apprentice from filing a charge of discrimination directly with the Nevada Equal Rights Commission or otherwise limit the authority of the Nevada Equal Rights Commission to independently investigate such matters concerning apprentices.

Sec. 3. If an apprentice was probationary at the time of their dismissal, the council will not reverse a committee's decision to dismiss the apprentice unless the council determines the dismissal was in error of the law, arbitrary or capricious. An apprentice is probationary if he has participated in an approved program for less than 6 months or for a period of time otherwise set forth in the standards of an approved program.

Sec. 4. The council may order the reinstatement of an apprentice into an approved program if it finds the reasons for the dismissal of the apprentice were in error of the law, arbitrary or capricious. If an approved program of apprenticeship training fails to reinstate an apprentice upon order of the council, the council may commence action against the approved program pursuant to NAC 610.360.

Sec. 5. A decision of the council entered pursuant to NAC 610.462 shall:
a. Contain findings of facts and conclusions of law related to the decision;
b. Inform the parties of the right to appeal the decision to the Labor Commissioner; and
c. Be served upon the parties by U.S. mail at the last known addresses

Sec. 6. Approval by the council of a new registered program of apprenticeship will be conditioned upon a period of probation of not less than 24 months. During its probationary period, a program must receive a minimum of one compliance review or quality assessment by staff of the labor commissioner.

Sec. 6 NAC 610.115 is hereby amended to read as follows:

1. The council ~~[will]~~ *may* meet on the second Thursday of the months of February, May, August and November ~~[. The council may meet]~~ *or* at other times at the call of a majority of its members.

2. Robert's Rules of Order govern the conduct of all meetings of the council.
3. Two representatives of employers and two representatives of employees constitute a quorum.
4. In the absence or recusal of the chairman of the council, the director will appoint another member of the council to preside over the proceedings of the council.
5. The council will designate the location of each of its meetings.
6. The director will have the minutes of the council meetings typed and will provide a copy of the minutes to each member of the council and to any other person who requests a copy.

Sec. 7 NAC 610.360 is hereby amended to read as follows:

1. The council will deny an application for the approval of a program of apprenticeship, suspend, terminate, cancel or place conditions upon any approved program, or place an approved program on probation if the applicant, approved program or an employer participating in the approved program fails to:

- (a) Respond to a subpoena issued pursuant to NRS 607.170 or 607.210;
 - (b) Pay an employee for each hour that the employee worked as required pursuant to NRS 608.016;
 - (c) Pay an employee at least the wage, salary or compensation that was agreed to be paid to him through a collective bargaining agreement, if any, or established pursuant to any existing statute or regulation of this state or by contract between the employer and the employee, as required pursuant to NRS 608.100;
 - (d) Establish or maintain the records of wages for the benefit of his employees as required pursuant to NRS 608.115;
 - (e) Assume the liability for the indebtedness of a subcontractor or any contractor acting under, by or for the original contractor as required pursuant to NRS 608.150;
 - (f) Pay an employee at least the minimum wage established pursuant to NRS 608.250 or comply with any regulation adopted pursuant thereto by the labor commissioner;
 - (g) Comply with the provisions of chapter 609 of NRS which govern the employment of minors or any regulation adopted pursuant thereto by the labor commissioner;
 - (h) Comply with any of the provisions of chapter 610 of NRS which govern apprenticeships, ~~for~~ any regulation adopted pursuant thereto by the council ~~or~~ or any order issued by the council after notice and opportunity for a hearing.
 - (i) Pay the contributions for unemployment compensation as required pursuant to chapter 612 of NRS;
 - (j) Provide and secure compensation for employees as required pursuant to chapters 616A to 617, inclusive, of NRS; or
 - (k) Cooperate with or comply with the orders of the division of industrial relations of the department of business and industry issued pursuant to chapter 618 of NRS.
 - (l) Provide reasonable justification for failing to maintain a completion rate of not less than 50% for all apprentices indentured into the registered apprenticeship program over a four year time period.
2. In determining the course of action to take against an approved program pursuant to subsection 1, the council may consider, without limitation:
- (a) The seriousness of the violation committed by the approved program or an employer participating in the approved program;
 - (b) Whether there appears to be a pattern of violations by the approved program or an employer participating in the approved program;

(c) The degree to which corrective remedies have been put in place to address any previous violation committed by the approved program or an employer participating in the approved program; and

(d) The responsiveness of a sponsor of an approved program to any violations committed by an employer participating in the approved program.

Sec. 8 NAC 610.460 is hereby amended to read as follows:

1. A joint committee may cancel an agreement with any apprentice and dismiss him. Upon such a cancellation and dismissal, the *joint* committee shall serve written notice of the dismissal upon the apprentice and also notify him of his right to request the committee to reconsider its decision. Such a notification must be given by certified or registered mail.

2. The apprentice may make such a request by filing a written notice of the request with the *joint* committee within 30 days after the date on which the notice of his dismissal from the program is deposited in the mail.

3. Upon receipt of such a request, the *joint* committee shall hold a hearing for the reconsideration *within 10 days. The joint committee shall prepare or cause to be prepared a record of the proceedings, including a transcript of the evidence resulting in the final decision of the committee.* The ~~[council]~~ *joint committee* will notify the apprentice of the *joint* committee's final decision upon reconsideration and of his right to appeal from that decision to the council if the *joint* committee has affirmed the dismissal. *At the time of noticing the apprentice of the joint committee's decision, the joint committee shall also provide a copy of the notice to the council.*

4. The apprentice may appeal from the *joint* committee's final decision to the council by filing a written notice of appeal with the council. This appeal must be filed within 30 days after the date on the notice of cancellation from the council.

5. The council will conduct a hearing on each appeal and issue its decision as soon as practicable after the hearing.

Sec. 9 NAC 610.461 is hereby amended to read as follows:

1. Upon the timely filing of a notice of appeal from a decision of a joint committee concerning the dismissal of an apprentice, the council will schedule a hearing and notify the parties, by certified mail, of the time and place of the hearing. *Upon notice of the hearing, the joint committee shall file with the council a copy of the record required pursuant to NAC 610.460. If either party fails to appear at the hearing, the council may proceed to consider the matter and dispose of it on the basis of the evidence before it.*

2. The parties shall, on forms prescribed by the council, furnish the council with all information which is in their possession and relates to the dismissal.

3. The council may receive affidavits or depositions in evidence.

4. The council will consider only those issues which were presented to the joint committee.

Sec. 10 NAC 610.485 is hereby amended to read as follows: The minimum reasonable and profitable wage for an apprentice in the construction industry is:

1. On a public work as defined in NRS 338.010, not less than the percentage set forth in the standards approved by the council of the prevailing wage for a journeyman established by the labor commissioner.

2. On a federal public works project, not less than the percentage set forth in the standards approved by the council of the prevailing wage for a journeyman established by the United States Department of Labor.
3. On a project which is paid for with federal and state money, the higher of the percentages set forth in subsections 1 and 2.
4. On a project other than a public work, not less than ~~[\$9.10]~~ \$9.47 per hour. The wages must be in cash and must not include any benefits.

Sec. 11 NAC 610.530 is hereby amended to read as follows:

Each sponsor shall:

1. Recruit, select, employ and train apprentices without discrimination because of race, color, religion, national origin, ~~or~~ sex~~[-],~~ *or age.*
2. Uniformly apply regulations concerning apprentices, including those which govern equality of wages, periodic advancement, promotion, assignment of work, the performance of a job, rotation among all of the different types of work involved in the trade, imposition of penalties or other disciplinary action, and all other administrative aspects of the program of apprenticeship.
3. ~~[Take affirmative action to provide equal opportunity in apprenticeship, including adoption of a plan for affirmative action in employment.]~~ *Adopt an affirmative action plan in compliance with NAC 610.570.*

TEXT OF REPEALED SECTIONS

NAC 610.960 Creation of private review bodies; submission of complaints; hearing; written notice of provisions.

1. One or more sponsors within a community may establish a private review body which uses fair, speedy and effective procedures to consider complaints which allege a failure to follow the standards of equal opportunity. The body must consist of at least three members who:
 - (a) Reside in the community where the sponsor is located;
 - (b) Serve without compensation; and
 - (c) Are not directly associated with the administration of any program of apprenticeship.
2. The council will present every complaint it receives to an appropriate private review body established pursuant to subsection 1, unless:
 - (a) The complainant indicates in his complaint that he does not desire review by a private review body; or
 - (b) The council has determined that the appropriate private review body will not effectively enforce the standards of equal opportunity.
3. The council will, within 30 days after referring a complaint to a private review body, obtain from the private review body a record of the body's disposition of the complaint. If the council accepts the disposition and finds that there was no failure to follow the standards of equal opportunity, the complaint is deemed denied by the council.
4. The council may conduct a hearing on any complaint which:
 - (a) A public review body fails to resolve within 90 days after receiving the complaint from the council; or

(b) Is resolved in favor of a sponsor by a private review body but which presents evidence that a practice of equal opportunity used in a program of apprenticeship violates the provisions of NAC 610.510 to 610.990, inclusive.

5. Every sponsor shall give written notice of the provisions of this section to every applicant for an apprenticeship and to every apprentice.

NAC 610.965 Complaints: Special processing. If the council decides that a particular situation warrants special action and an expedited or extended determination, it will permit such a determination upon finding that no person affected thereby will be prejudiced.

NAC 610.967 Hearing officers; notice; findings and decisions.

1. The director shall appoint a hearing officer within 10 days after receipt of a request for a hearing.
2. The notice required by NRS 233B.121 to be sent to all affected parties must be sent by certified mail with return receipt requested.
3. A hearing officer must base his findings and decisions upon the record and report them to the director.