

**PROPOSED REGULATION OF THE STATE**

**APPRENTICESHIP COUNCIL**

**LCB File No. R082-04**

May 13, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 4, 7-15, NRS 610.090; §2, NRS 610.070 and 610.090; §3, NRS 610.090 and 610.095; §5, NRS 610.090 and 610.140; §6, NRS 610.090 and 610.180.

A REGULATION relating to apprenticeships; revising the provisions relating to approved programs; requiring newly approved programs to be on probation for a period of at least 2 years; requiring a joint committee to have a hearing for the reconsideration of a dismissal of an apprenticeship within 10 days after its initial decision; requiring the State Apprenticeship Council to grant continuances of hearings involving apprentices dismissed upon a showing of good cause that the dismissal was a result of discrimination; increasing the minimum reasonable and profitable wage for an apprentice in the construction industry on a project other than a public work; prohibiting discrimination based on age with regard to apprenticeships; and providing other matters properly relating thereto.

**Section 1.** Chapter 610 of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. Each newly approved program will be on probation for a period of at least 2 years.*
- 2. During the period described in subsection 1, the staff of the Labor Commissioner shall conduct at least one of the reviews of the approved program described in NAC 610.495.*

**Sec. 2.** NAC 610.115 is hereby amended to read as follows:

610.115 1. The Council will meet ~~[on the second Thursday of the months of February, May, August and November.]~~ *at least once in each calendar quarter.* The Council may meet 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. 3.** NAC 610.360 is hereby amended to read as follows:

610.360 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, *the* 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:~~:

*(1) Of the* provisions of chapter 610 of NRS which govern apprenticeships or any regulation adopted pursuant thereto by the Council; *or*

*(2) Order issued by the Council after providing notice and a hearing and for good cause shown;*

(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; ~~for~~

(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 ~~H~~; *or*

*(l) Maintain a successful completion rate for apprentices of 50 percent or more over a 4-year period unless the approved program provides the Council with a reasonable explanation for noncompliance.*

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. 4.** NAC 610.442 is hereby amended to read as follows:

610.442 The period of probation of a registered apprentice must not exceed 25 percent of his total hours of training on the job and related instruction ~~{}~~, *or 6 months, whichever is less.*

**Sec. 5.** NAC 610.460 is hereby amended to read as follows:

610.460 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 *joint* 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}~~ *Within 10 days after* receipt of ~~{such}~~ a request, the *joint* committee shall hold a hearing for the reconsideration. The ~~{Council will notify the}~~ *joint committee shall notify:*

(a) *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 ~~{}~~; *and*

*(b) The Council of the joint committee's final decision upon reconsideration.*

4. *The joint committee shall prepare a record of the hearing required pursuant to subsection 3 that includes, without limitation, an explanation of the final decision of the Council.*

5. 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. 6.** NAC 610.461 is hereby amended to read as follows:

610.461 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.

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. *The joint committee shall furnish the Council with the record required pursuant to NAC 610.460.*

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.

5. *If a party fails to appear at the hearing conducted pursuant to subsection 1, the Council may proceed with the hearing and consider any evidence that it has before it.*

6. *The Council will issue its decision as soon as practicable after the hearing. The decision must:*

*(a) Include:*

- (1) The Council's findings of fact on the matters described in subsections 2, 3 and 4;*
- (2) A statement that the parties may appeal the decision to the Labor Commissioner;*

*and*

- (b) Be sent by mail to the last known addresses of all parties.*

*7. The Council may not reverse the decision of a joint committee to dismiss an apprentice unless the Council determines that the dismissal was arbitrary, capricious or based on erroneous conclusions of law.*

**Sec. 7.** NAC 610.463 is hereby amended to read as follows:

610.463 *1.* A continuance of a hearing on the cancellation of an agreement of apprenticeship and the dismissal of an apprentice will not be granted by the Council and may not be granted by a joint committee except for good cause shown.

*2. If an apprentice shows good cause at the hearing conducted by the Council pursuant to subsection 1 of NAC 610.461 that he was dismissed in violation of the standards set forth in NAC 610.530, the Council will:*

- (a) Refer the matter to the Nevada Equal Rights Commission; and*

*(b) Grant a continuance of the hearing until the Nevada Equal Rights Commission disposes of the matter.*

*3. Nothing in this section:*

*(a) Prohibits an apprentice from personally filing a claim of discrimination with the Nevada Equal Rights Commission; or*

*(b) Limits the authority of the Nevada Equal Rights Commission to investigate independently a claim of discrimination personally filed by an apprentice.*

**Sec. 8.** NAC 610.485 is hereby amended to read as follows:

610.485 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. 9.** NAC 610.510 is hereby amended to read as follows:

610.510 1. NAC 610.520 to 610.990, inclusive, set forth policies and procedures to promote equality of opportunity in programs of apprenticeship which are registered with the United States Department of Labor and in state programs of apprenticeship registered with the Council.

2. The policies and procedures apply to:

- (a) The recruitment and selection of apprentices; and
- (b) The conditions of employment and training during apprenticeship.

3. The procedures provide for:

- (a) Review of programs of apprenticeship;
- (b) Registration of programs of apprenticeship;

- (c) Processing complaints;
- (d) Withdrawing registration from programs of apprenticeship which do not comply; and
- (e) The continuation or withdrawal of the recognition of the Council for registering programs of apprenticeship pursuant to federal law and regulations.

4. The purpose of NAC 610.520 to 610.990, inclusive, is to promote equality of opportunity in apprenticeship by:

- (a) Prohibiting discrimination based on *age*, race, color, religion, national origin or sex in programs of apprenticeship;
- (b) Requiring affirmative action to provide equal opportunity in programs of apprenticeship; and
- (c) Coordinating state programs with other programs for equal opportunity.

**Sec. 10.** NAC 610.530 is hereby amended to read as follows:

610.530 Each sponsor shall:

1. Recruit, select, employ and train apprentices without discrimination because of *age*, race, color, religion, national origin or sex.
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.]~~

**Sec. 11.** NAC 610.540 is hereby amended to read as follows:



610.540 Each sponsor shall include in his standards a pledge of equal opportunity which is worded substantially as follows:

The recruitment, selection, employment and training of apprentices during apprenticeship will be without discrimination because of *age*, race, color, religion, national origin or sex. The sponsor will take affirmative action to provide equal opportunity in apprenticeship and will operate the program of apprenticeship as required under Title 29 of the Code of Federal Regulations, Part 30, and all regulations on equal opportunity of employment in the State of Nevada.

**Sec. 12.** NAC 610.665 is hereby amended to read as follows:

610.665 1. A sponsor may take other appropriate action to ensure that the recruitment, selection, employment and training of apprentices during apprenticeship is without discrimination based upon *age*, race, color, religion, national origin or sex.

2. The program for affirmative action must set forth the specific steps the sponsor intends to take to prevent discrimination. Financial or other assistance may be available from the Department to carry out specific steps.

**Sec. 13.** NAC 610.955 is hereby amended to read as follows:

610.955 1. Any apprentice or applicant for apprenticeship who believes that he has been discriminated against on the basis of *age*, race, color, religion, national origin or sex with regard to *an* apprenticeship, or that the standards for equal opportunity with respect to his selection have not been followed in the operation of a program of apprenticeship, may, personally or through an authorized representative, file a complaint with the Council . ~~for with a private review body established pursuant to NAC 610.960.~~

2. A complaint must be in writing, signed by the complainant, and include the name, address and telephone number of the person allegedly discriminated against, the name of *the* sponsor involved, and a brief description of the circumstances of the alleged failure to apply the standards of equal opportunity required by NAC 610.510 to 610.990, inclusive.

3. ~~[Except as provided in subsection 4, a]~~ A complaint must be filed ~~[no]~~ *not* later than 180 days after the alleged occurrence of the discrimination or the alleged failure to follow equal opportunity standards.

~~[4.— If a complaint is initially filed with a private review body established pursuant to NAC 610.960, it must be filed with the Council within the period specified in subsection 3 or within 30 days after a final decision of the private review body, whichever is later. The Council may, upon a showing of good cause, extend the time it will receive a complaint initially filed with a private review body.]~~

**Sec. 14.** NAC 610.985 is hereby amended to read as follows:

610.985 The commitments contained in a sponsor's program for affirmative action are not intended and may not be used to discriminate against any qualified applicant or apprentice on the basis of *age*, race, color, religion, national origin or sex.

**Sec. 15.** NAC 610.960, 610.965 and 610.967 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**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.