

LCB File No. R054-07

**PROPOSED REGULATION OF THE
STATE APPRENTICESHIP COUNCIL**

(This regulation was previously adopted as T014-06)

NOTICE OF HEARING AND INTENT TO ACT UPON A REGULATION

The Nevada State Apprenticeship Council is proposing the permanent adoption of temporary regulations which pertain to Chapter 610 of Nevada Administrative Code and address apprenticeship programs.

Temporary regulations, identified as LCB File No. T014-06, were adopted by the Nevada State Apprenticeship Council on November 17, 2006. A workshop on the temporary regulations was held on October 13, 2006 for the purpose of soliciting comments and information from interested persons prior to drafting proposed regulations. A workshop on the proposed permanent regulation was held on August 29, 2007 in Las Vegas, Nevada and Carson City, Nevada.

The public hearing has been scheduled for the following time and locations:

October 10, 2007
9:00 am
Sawyer Building, Room 4401
555 E. Washington Avenue
Las Vegas, Nevada 89101

Interested persons may also participate via teleconference at the following location:

Legislative Building, Room 3137
401 South Carson Street
Carson City, Nevada

The purpose of the hearing is to solicit testimony from all interested persons regarding the amendment of a regulation that pertains to Chapter 610 of NAC. Persons wishing to comment upon the proposed action of the Nevada State Apprenticeship Council may appear at the scheduled hearing or may address their comments, data, views, or arguments, in written form, to Michael Tanchek, Secretary/Director, Nevada State Apprenticeship Council, 675 Fairview Drive, Suite 226, Carson City, Nevada 89701. Written submissions must be received on or before Friday, October 5, 2007. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada State Apprenticeship Council may proceed immediately to act upon any written submissions.

NOTICE: A sign language interpreter will be provided if requested. The Nevada State Apprenticeship Council will make reasonable efforts to assist and accommodate persons with disabilities desiring to attend its meetings and hearings. Please call 775-687-4850 or 702-486-2650 at least five working days prior to the meeting or hearing.

A copy of all materials relating to the proposal may be obtained by contacting the

Office of the Labor Commissioner or
675 Fairview Drive, Suite 226
Carson City, NV 89701
(775) 687-4850

Office of the Labor Commissioner
555 E. Washington Avenue, Suite 4100
Las Vegas, NV 89101
(702) 486-2650

Upon adoption of any regulation, the Council, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This Notice of Hearing and Intent to Act upon Regulations has been sent to all persons on the agency's mailing list for administrative regulations, the main library in each county, and posted at the following locations:

Office of the Labor Commissioner
555 W. Washington Avenue Suite 4100
Las Vegas, NV

Carson City District Courthouse
885 E. Musser Street
Carson City, NV

Grant Sawyer State Office Building (Lobby)
555 E. Washington Avenue
Las Vegas, NV

Legislative Building
401 S. Carson Street
Carson City, NV

Office of the Labor Commissioner
675 Fairview Drive, Suite 226
Carson City, Nevada 89701

State of Nevada Bradley Building
2501 Sahara Avenue
Las Vegas, NV

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment.

The United States Department of Labor relegated the Nevada State Apprenticeship Council to conditional approval as a result of a program audit conducted in 2005. This rulemaking was initiated in order to bring the program into compliance with federal requirements.

2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

- a. Amendments to regulations proposed by the United States Department of Labor as a result of their 2005 program audit.

- b. Standing issues related to the filing of applications for apprenticeship programs and the calculation of apprentice wages.

3. How to obtain a copy of the proposed regulation prepared by the Legislative Counsel Bureau.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available for inspection and copying by members of the public during business hours at the offices of the Labor Commissioner, located at 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada and 675 Fairview Drive, Suite 226, Carson City, Nevada, respectively, and at the main public library in all counties in which an office of the agency is not maintained.

This information is also available on the Labor Commissioner's website located at www.laborcommissioner.com. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which are prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

4. The estimated economic effect of the regulation on the businesses which it is to regulate and on the public.

- a. **Adverse Effects:** None.
- b. **Beneficial Effects:** None.
- c. **Immediate effects:** None.
- d. **Long Term effects:** None.

5. A statement identifying the methods used to determine the impact on small business prepared pursuant to subsection 3 of NRS 233B.0608.

To determine the impact on small business, the Council solicited testimony from impacted business during the temporary rule-making process. That process included two workshops and a public hearing. In addition, the Council solicited testimony from impacted business for the August 29, 2007 workshop on the proposed permanent regulation.

6. The estimated cost to the agency for enforcement of the proposed regulation.

The regulations per se should not result in any increased costs to the agency.

7. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulations duplicate regulations of the US Department of Labor with regard to apprenticeship programs.

8. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulations are required to bring Nevada into compliance with 29 CFR part 29 and 30.

9. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The proposed regulations are not more stringent than federal regulations.

10. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation does not establish a new fee nor increases an existing fee.

**PROPOSED REGULATION OF THE
STATE APPRENTICESHIP COUNCIL**

(This regulation was previously adopted as T014-06)

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

A REGULATION relating to apprenticeships; revising the requirements for new programs of apprenticeship seeking registration; revising the provisions requiring equal opportunity for employment of apprentices; authorizing a sponsor to establish a private review body to consider complaints which allege a failure to follow the standards of equal opportunity; establishing the procedures for filing and processing such complaints; and providing other matters properly relating thereto.

AUTHORITY: §§1-16, NRS 610.090.

Section 1. Chapter 610 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. *If a program of apprenticeship is proposed by an employer or association of employers for registration with the Council and the standards, collective bargaining agreement or other instrument of the program provides for participation by a union in any manner in the operation of the substantive matters of the program, and the union chooses to participate, the employer or association of employers shall provide to the Council a written acknowledgment by the union that the union does not object to the program of apprenticeship.*

2. If the union does not choose to participate in the operation of the substantive matters of a program, the employer or association of employers shall provide the union with a copy of the application for registration and the proposal for a program of apprenticeship.

3. The Council will provide a reasonable time period of not less than 30 days but not more than 60 days to receive comments from the union, if any, before taking final action on an application for registration.

Sec. 3. 1. *A sponsor is deemed to be fulfilling its obligation to provide equal opportunity for employment if the sponsor meets the goals and timetables established pursuant to NAC 610.720 or if it makes a good faith effort to meet such goals and timetables.*

2. If a sponsor fails to meet its goals and timetables, the Council will give the sponsor an opportunity to demonstrate that it has made a good faith effort to meet such goals and timetables. The Council will review and evaluate the actions of the sponsor in determining whether the sponsor has made a good faith effort to meet its goals and timetables.

Sec. 4. 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.*
- (c) If a program does not establish a private review body, the Council will conduct the review.*

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, and sections 2 to 6, inclusive, of this regulation.*

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

Sec. 5. *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.*

Sec. 6. *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.

Sec. 7. NAC 610.355 is hereby amended to read as follows:

610.355 1. If a program of apprenticeship is proposed by an employer or association of employers for registration with the Council and the Council has previously registered a program with similar objectives for a similar job, the Council will provide a copy of the standards of the proposed program to the sponsor of the registered program.

2. The Council will provide a reasonable time, not less than 30 days or more than 60 days, for the registered sponsor to comment on the proposed program before taking final action on the application for registration.

3. Any registered sponsor who elects to comment may request in its written comments that it be allowed to become a party of record to the application for the proposed program of apprenticeship. If the registered program demonstrates to the Council that it has a direct and substantial interest in the application for the program of apprenticeship, the Council shall make the registered sponsor a party of record to the application and shall provide written notice to the registered sponsor and the applicant of such action. Once the Council has made a registered sponsor a party of record, the registered sponsor shall receive notice of any matter on the application, including any final action taken on the application by the Council.

4. The registered sponsor, as a party of record, may appeal the Council's final action on the application to the Labor Commissioner. If the registered does not appeal the Council's final action to the Labor Commissioner, but the applicant for the proposed program does, the registered sponsor shall be given notice of the appeal and shall have a right to participate, as a party of record in the appeal so taken.

Sec. 7. NAC 610.510 is hereby amended to read as follows:

610.510 1. NAC 610.510 to 610.990, inclusive, *and sections 2 to 6, inclusive, of this regulation* 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 610.510 to 610.990, inclusive, *and sections 2 to 6, inclusive, of this regulation* is to promote equality of opportunity in apprenticeship by:

- (a) Prohibiting discrimination based on race, color, religion, sex, sexual orientation, age, disability or national origin 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. 8. NAC 610.610 is hereby amended to read as follows:

610.610 Except as *otherwise* provided in NAC 610.570, each sponsor shall adopt a *written* plan for affirmative action in employment.

Sec. 9. NAC 610.620 is hereby amended to read as follows:

610.620 1. ~~[A]~~ *An acceptable* plan for affirmative action must include adequate ~~[provision]~~ *provisions* for positive *outreach and* recruitment ~~[which might]~~ *that would* reasonably be expected to increase the participation of minority persons and women in a program of apprenticeship.

2. In order to achieve the objectives, sponsors shall undertake a significant number of activities such as those listed in NAC 610.625 to 610.665, inclusive. ~~[No]~~ *A* sponsor is *not* required to include all of the listed activities in its ~~[program]~~ *plan* for affirmative action ~~[]~~ *as the scope of the plan for affirmative action will depend on the circumstances, including the size and type of the program and the resources available to the program.*

3. *The plan for affirmative action must provide the specific activities the sponsor intends to take in order to achieve the purposes set forth in subsection 1.*

Sec. 10. NAC 610.750 is hereby amended to read as follows:

610.750 1. The sponsor's determination of whether goals and timetables are required must be based upon an analysis of at least the following factors:

(a) The size of the population of working-age women and minority persons in the labor *force in the labor* market of the area in which the sponsor operates;

(b) The percentage of *women and* minority persons ~~[and females]~~ participating as apprentices in the particular craft, as compared with the percentage of women and minority persons in the labor force in the area in which the sponsor operates;

(c) The percentage of *women and* minority persons ~~[and females]~~ participating as journeymen employed by the employer or employers participating in the program, as compared with the percentage of *women and* minority persons ~~[and women]~~ in the area in which the sponsor operates, and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices *if available*; and

(d) The availability of women and minority persons with capacity for apprenticeship in the area in which the sponsor operates *if available*.

2. The analysis must be reduced to writing and included in the plan for affirmative action.

Sec. 11. NAC 610.835 is hereby amended to read as follows:

610.835 1. Oral interviews may not be used as a standard for qualification for admission into a pool.

2. An applicant who is listed in a pool may be required to submit to an oral interview before being selected as an apprentice.

3. Oral interviews may include questions which are required to determine the fitness of applicants to enter a program of apprenticeship, but may not include questions which are related to qualifications previously determined in gaining entrance into the pool.

4. Each interviewer at an oral interview shall record his questions, the general nature of the answers and a summary of his conclusions.

5. Each applicant who is rejected from the pool on the basis of an oral interview must be given a written statement of rejection containing the reasons for the rejection *upon his or her written request.* ~~[and a]~~ *Such* statement ~~[of his right]~~ *shall include the rights available to the applicant* to appeal the rejection.

Sec. 12. NAC 610.850 is hereby amended to read as follows:

610.850 1. After obtaining the approval of the Council, a sponsor may select apprentices from a pool of eligible applicants on a random basis. An impartial person or persons selected by the sponsor and not associated with the administration of the program of apprenticeship shall supervise the selection process.

2. The time and place of the selection and the number of apprentices to be selected must be announced in advance, and the place of the selection must be open to all applicants and the public.

3. The names of apprentices drawn by this method must be posted at the sponsor's place of business immediately after the selection.

4. A sponsor who adopts the random method of selecting apprentices shall meet the requirements of NAC 610.815 to 610.840, inclusive.

5. The sponsor shall, ~~if~~ *where* required by NAC 610.720, 610.730 and 610.740, establish percentage goals and timetables for the admission of women and minority persons into the pool in accordance with the provisions of NAC 610.710 to 610.760, inclusive.

6. The sponsor's compliance with its obligations under these regulations will be determined in accordance with the provisions of NAC 610.760.

Sec. 13. NAC 610.855 is hereby amended to read as follows:

610.855 1. A sponsor may select apprentices from a pool of the workers already employed by ~~him~~ *the sponsor* in a manner prescribed by any collective bargaining agreement or established policy of the sponsor regarding promotion.

2. The sponsor who adopts this method of selecting apprentices shall establish goals and timetables for the selection of female and minority apprentices, unless the sponsor concludes, in accordance with the provisions of NAC 610.710 to 610.760, inclusive, that it does not have deficiencies in the numbers of women and minority persons in the crafts represented by its program of apprenticeship.

3. The sponsor's compliance with its obligations under these regulations will be determined under the provisions of NAC 610.760.

Sec. 14. NAC 610.860 is hereby amended to read as follows:

610.860 1. A sponsor may select apprentices by any other method, including its present selection method, if the sponsor meets the requirements of this section.

2. By January 6, 1980, the sponsor shall establish the method of selection it proposes to use and submit it to the Council, together with the rest of its written program for affirmative action. If required by NAC 610.710 to 610.760, inclusive, the sponsor must include its percentage goals and timetables for the selection of female and minority applicants for apprenticeship and its written analysis upon which such goals and timetables, or lack thereof, are based.

3. The sponsor may not use any method of selection allowed by subsection 1 until the Council approves it as meeting the requirements of subsection 4 and approves the remainder of its program for affirmative action, including its goals and timetables.

4. If the Council fails to act upon the method of selection and the program for affirmative action within 30 days after its submission, the sponsor may begin to use the selection method.

5. Apprentices must be selected on the basis of objective and specific standards of qualification. Standards may include fair aptitude tests, diplomas from schools or their equivalent, a minimum and maximum age, essential requirements of health and strength, fair interviews, grades achieved in schools and previous experiences of working. If interviews are used as a standard for qualification, adequate records must be kept and must include a brief summary of each interview and the conclusions reached regarding each of the specific factors used at the interview, including the applicant's motivation, ambition and willingness to accept direction. The program sponsor shall meet the requirements set forth in 41 C.F.R. Part 60-3 when ~~he applies~~ *applying* the standards listed in this subsection.

6. The sponsor's compliance with its obligations under these regulations will be determined under the provisions of NAC 610.760. A sponsor must also meet the following requirements:

(a) If a sponsor fails to meet its goals and timetables within a reasonable period of time and has made efforts in good faith to do so, the Council may require the sponsor to make appropriate changes in its program for affirmative action to the extent necessary to attain its goals.

(b) The sponsor may also be required to develop and adopt an alternative method of selection, including a method prescribed by the Council, if the Council determines that the failure of the sponsor to meet its goals is attributable in substantial part to its present method of selection.

(c) If the sponsor's failure to meet its goals is attributable in substantial part to its use of a standard of qualification which has adversely affected the opportunities of women and minority persons for apprenticeship, the Council may require the sponsor to demonstrate that the standard of qualification is directly related to the performance of the job.

Sec. 15. NAC 610.865 is hereby amended to read as follows:

610.865 1. If a sponsor which has adopted a method of selection under NAC 610.845, 610.850 or 610.860 determines that there are fewer women or minority persons on its existing lists of eligible persons than should reasonably be expected using the analysis described in NAC 610.750, ~~it~~ *the sponsor* shall discard all existing lists of eligible persons upon the adoption of one of the permitted methods of selection. After discarding existing lists, the sponsor must establish a new pool of eligible persons and a list thereof must be posted at the sponsor's place of business.

2. A sponsor shall establish a reasonable period of at least 2 weeks for accepting applications for admission to a program of apprenticeship. *A sponsor must provide notice to the public of the acceptance of such applications at least 30 days before the period of acceptance begins.*

Sec. 16. 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 race, color, religion, sex, sexual orientation, age, disability or national origin 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 ~~it~~ *or with a private review body established pursuant to section 4 of this regulation.*

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 ~~1.~~

~~3.~~ ~~A]~~, and sections 2 to 6, inclusive, of this regulation.

3. *Except as otherwise provided in subsection 4, a* complaint must be filed 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 section 4 of this regulation, the complaint must also 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.*