

NEW YORK STATE APPRENTICESHIP TRAINING

Labor Law Article 23

Regulatory Flexibility Analysis for Small Businesses and Local Governments

1. Effect of the Rule:

Adoption of the proposed rule will apply to all small businesses and local governments currently sponsoring or applying for sponsorship of registered apprenticeship programs in New York State.

All registered apprenticeship programs are regulated by the Department of Labor under a uniform set of standards applicable to large and small businesses and local governments alike. While an overwhelming majority of registered programs fall into categories such as building and construction trades (representing 321,600 employees), specialty trades (plumbing, heating and electrical, with 206,400 employees), and manufacturing trades (463,600 employees), non-traditional trades (such as baker, chef, dental lab technician or HIV counselor) are also represented. Local governments, including towns, villages, school districts or fire districts, are eligible for sponsorship in all categories and may offer training in business or health services, justice, public order and safety or human resources administration.

At present, the Department administers 835 registered programs representing 619 employers, employing 20,027 apprentices. Of the 835 registered programs, 561 (approximately two-thirds of the registered sponsors) employ fewer than 5 apprentices. Sponsors with fewer than 5 apprentices are authorized to submit an Equal Opportunity

pledge to meet Department standards and are eligible for alternative selection methods in recruiting apprentices rather than the more detailed Affirmative Action Plans required for larger programs.

2. Compliance Requirements:

Each small business or local government choosing to participate in the apprenticeship training program must meet eligibility requirements and provide the necessary documentation for approval of its application. After registration, all sponsors must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to the sponsor's training program.

Sponsors of group programs with either a participating union or association of employers will be required to provide written information to the Department relating to their participating members, including:

- (a) Identification of their signatory members at the time of application or re-certification;
- (b) Copies of the collective bargaining agreement or association agreement on request by the Department or on a form provided by the Department;
- (c) Notification to the Department in the event a participating signatory or member is added or removed from the apprenticeship program;
- (d) A statement that all participating members or signatories agree to be bound by the terms of the Apprenticeship Agreement.

All sponsors are required to provide:

- (a) A complete and accurate Sponsor Information Sheet (Form AT-9) identifying affiliated businesses or entities;
- (b) The identification of related instruction providers for the length of the apprentice's program and method of instruction (Form AT-8);
- (c) Documentation of an apprentice's wage progression, task rotation and attendance at related instruction courses;
- (d) Notification to the Department of any proposed modifications or changes in the administration of the program (Form AT-10);
- (e) Documentation of an apprentice's progress in the event of a transfer to another registered program;
- (f) Records documenting work performed by journeyworkers on job sites in the State.

In addition to the documentation demonstrating the apprentice's progress required for all sponsors, sponsors who opt for the competency-based or hybrid approaches to apprentice training will be required to submit an outline of the work processes and levels of skill required to be evaluated for that trade to the Department for its approval, as well as the means used to measure both hands-on and written proficiency. Sponsors using these approaches will also be required to identify the third-party provider who will do the testing and provide a controlled learning environment to ensure verifiable results.

Finally, section 601.7(d)(4)(vi) requires sponsors using these approaches to provide the Department with the results of both the hands-on and written testing.

The Department will conduct on-site monitoring semi-annually and require appropriate documentation for recertification at least every five years after registration.

Adoption of section 601.15 providing for reciprocal approval of programs registered in other states or by the Office of Apprenticeship will not impose any new compliance requirements on small businesses or local governments.

3. Professional Services:

Program sponsors will not be required to retain professional services to comply with the adoption of these regulations. The services and recordkeeping required are performed by the sponsor's apprenticeship coordinator, project manager, or payroll/bookkeeping personnel in the ordinary course of administering an apprenticeship program.

Sponsors who opt for the competency-based or hybrid approaches to apprentice training will be required to obtain the services of an accredited third-party provider in administering the testing used in evaluating the apprentice's acquisition of skills and competencies required for that trade.

4. Compliance Costs:

The Department does not anticipate that small businesses or local governments who sponsor registered programs will incur any additional expenses for personnel or equipment due to adoption of these regulations. Some additional costs associated with

providing related instruction to apprentices may be incurred although it is anticipated such costs will be minimal.

In general, apprenticeship training programs do not add additional costs to businesses because employers will include the cost of an apprentice's labor in submitting bids or proposals for private or public work projects. For local governments, any associated costs would be minimal and can be absorbed using existing staff and resources.

Section 601.5(c)(13) was added to meet the Federal requirement that training shall be conducted by qualified personnel, while instructors providing related and supplemental instruction must meet the State Department of Education requirements for vocational-technical instruction. No additional costs are incurred for training personnel, since sponsors are authorized to qualify supervising journeyworkers who have attained the level of skill, abilities and competencies recognized within the industry or occupation. Sponsors who use a related instruction provider approved by the Department of Education will not incur any additional costs, while sponsors providing approved in-house instruction may incur the cost of having their instructors qualified by the Department of Education.

Sponsors who opt for the competency-based or hybrid approaches to apprentice training may incur additional costs in evaluating the apprentice's acquisition of skills and competencies required for that trade. Section 601.7(d) requires that sponsors measure an apprentice's proficiency using testing methods recognized in evaluating both hands-on skills and written instruction conducted by a qualified, independent third-party provider.

Section 601.7(d)(3) provides that sponsors assume the responsibility for any expenses incurred in administration of these tests.

At present, there are no Federal or State estimates for the expenses that may be incurred in engaging the services of an independent third-party provider. Costs are expected to vary depending upon the size of the registered program, the extent and description of the services rendered and selection of a provider from either an industry or nationally recognized trade association, labor group or other accredited educational institution, such as a community college or training organization. It is anticipated that sponsors will negotiate with providers for the costs of administering these tests, subject to the Department's approval, based on the actual or good faith estimate of such costs prior to implementation.

5. Economic and Technological Feasibility:

It is economically and technologically feasible for small businesses and local governments to comply with this rule. The rule relies on existing technological capabilities and services readily available to affected parties.

6. Minimizing Adverse Impact:

The Department has expanded information available on its website to meet the needs of applicants and program sponsors. The proposed rule contains provisions for

posting trade updates on the Department's website with a time period for comments [601.4(f)] and the publication of comments for review [601.4(f)].

Numerous provisions have been added to adjust time frames to meet the needs of both sponsors and the Department. The period of time for receiving comments from a union not participating in a program proposed for registration has been expanded from 30 to 45 days [601.4(e)]; supervising journeyworkers may certify an apprentice's work progress on a monthly rather than weekly basis [601.5(d)]; and a 60 day period of time in which to make corrections in program applications was added [601.4(b)(5)]. Applicants for sponsorship may receive technical assistance from apprenticeship training representatives and applicants who have been denied registration will be provided with notification of the grounds for denial as well as a process for appeal [601.4(b)(8) and (9)].

Under the proposed rule, instructors providing related and supplemental instruction must meet the State Department of Education requirements for vocational-technical instruction. The Department of Labor and the Department of Education have sought to minimize those costs by identifying educational resources, such as on-line courses in which certification for instructors can be obtained at minimal expense.

Section 601.7 was added to conform to the Federal rule that State Agencies offer alternatives to the traditional time-based approach to apprentice training [29 CFR 29.5(b)] in an effort to expand apprenticeship to new industries. The competency-based and hybrid approaches were added "to provide a variety of industries with greater flexibility and options [in addressing] their talent development" 73 FR 64409. While sponsors remain free to select any of the three approaches, USDOL noted "we expect that

most sponsors [of traditional apprenticeship trades using the time-based method] will continue using this approach” 73 FR 64409.

Section 601.8(c)(1) was added to address the Federal requirement that State agencies evaluate a program’s completion rate in comparison to the national average for completion rates [29 CFR 29.6(c)]. In order to minimize any adverse effect on smaller programs or those whose work is largely seasonal, resulting in a lower completion rate when compared on a national scale, subsection (e) was added to 601.8(c)(1) to allow the Department to consider other relevant factors in reviewing a program’s rate of completion.

29 CFR 29.6(a) requiring all registered programs to have at least one apprentice except for specified periods of time is adopted in section 601.8(a) of the proposed rule. Programs failing to meet this standard are deemed deregistered under section 601.8(e)(1). Comments received from a number of employers have suggested the seasonal nature of some trades in New York, as well as a prolonged downturn in the economy, make this requirement difficult to fulfill. As a result, in addition to exceptions contained in the Federal regulations, the Department has provided sponsors experiencing economic difficulties the opportunity to apply for “inactive status” while maintaining their registration [section 601.8(e)(2)]. Sponsors may remain inactive for a period up to one year unless a further extension of time is granted by the Commissioner.

7. Small Business and Local Government Participation:

Former Governor Eliot Spitzer and the Commissioner of Labor imposed a moratorium on approval of new apprenticeship programs on August 28, 2007 in order to review and evaluate the State's program standards and procedures. Two reviews were conducted in which input from stakeholders, partners and Apprenticeship Training Program staff was obtained. Both echoed common themes and offered similar recommendations. In addition, seven public forums were held throughout the state in August and September 2008, offering the public, including small business and local government sponsors, an opportunity to provide their comments on the reports. All feedback received as a result of these activities was reviewed and considered. A number of recommendations which surfaced from the reviews are reflected in regulatory amendments adopted on September 29, 2009, as well as those being proposed with these revisions.

The Department also solicited comments from sponsors, stakeholders and interested parties at public forums conducted on January 28, 2010, May 14, 2010 and September 14, 2010. Copies of the proposed revisions were mailed to registered sponsors prior to the Apprenticeship Council meetings held on May 14, 2010 and September 14, 2010, and published on the Department's website after the meetings were concluded. Both oral and written comments and suggestions were reviewed and considered in proposing the adoption of the current rule.