



# **New Legal Requirements For Apprenticeship Programs Are Headed Your Way**

Insights

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Apprenticeship programs will soon face expanded antidiscrimination obligations and additional affirmative action requirements under a proposed rule recently published by the U.S. Department of Labor (USDOL). If you sponsor such a program, the time is now to prepare for the inevitable changes to come your way in 2016.

## **New Types Of Prohibited Discrimination**

In 1937, the National Apprenticeship Act authorized the USDOL to develop and enforce labor standards to protect individuals participating in certain registered apprenticeship programs. Nondiscrimination requirements were added to the law starting in 1963, prohibiting discrimination on account of race, color, religion, national origin, and sex. Although these regulations have not been updated since 1978, that will change in 2016.

The proposed rule, first published in late 2015, will add several additional categories to list of prohibited types of discrimination. Once finalized, discrimination based on sexual orientation, age (40 or older), genetic information, and disability will also be barred.

Certain preventive steps that are recommended in the existing rules will become mandates under the proposed rule. For example, sponsors will be required to maintain a workplace free of harassment and retaliation based on any of the above-listed protected classes. This will require you to take certain affirmative steps, including communicating your policy, providing antidiscrimination training, establishing a complaint procedure, and assigning a specific individual to oversee your commitment to equal-opportunity employment.

Also mandatory under the proposed rule: publishing and posting an equal opportunity pledge, and conducting orientation and information sessions for apprentices. In fact, the proposal will require four specific outreach and recruitment activities, including creating and maintaining lists of recruitment sources, and notifying interested parties at least 30 days in advance of openings.

Sponsors who fail to comply could face a temporary moratorium on your registration of new apprentices or even de-registration.

## **New Requirements For Affirmative Action Plans**

The proposed rule also provides new requirements for affirmative action plans (AAPs). Among other

things, the plans must include steps for performing utilization analyses, instructions and procedures to establish utilization goals for race, sex and ethnicity, and a method for setting a utilization goal for individuals with disabilities.

At a minimum, you will have to undertake certain specified activities to address any underutilization. For example, you will need to annually review your AAPs and incorporate a description of the review in your written AAP, along with any modifications made or planned as a result of the review. You will be able to adopt any method of your choice for selecting apprentices, provided the method meets certain nondiscrimination requirements.

Sponsors will also be required to invite applicants to voluntarily self-identify as an individual with a disability. The proposed rule provides specific language that you will need to use in making these inquiries, and specifies certain points in time when you will need to make them.

Apprenticeship programs with fewer than five apprentices will remain exempt from the affirmative action requirements. Larger programs may be able to avoid these new requirements if you already have an approved equal employment opportunity program (which now must include individuals with disabilities).

### **Additional Requirements**

The proposed rule also includes updated recordkeeping requirements and specific procedures for compliance reviews. Sponsors will be required to notify all applicants and apprentices of their right to file a discrimination complaint with the registration agency and the procedures for doing so. In an enforcement action, the registration agency will suspend registration of all new apprentices until you complete a compliance action plan, or until a final order is issued in formal de-registration proceedings.

### **What's Next? What Should You Do?**

If you want to submit comments on the proposed rule to the USDOL, the agency recently extended the deadline to January 20, 2016. We expect the agency to act quickly to implement a final rule soon after the comment period closes. Therefore, apprenticeship program sponsors should anticipate that you will need to make significant changes to your nondiscrimination and affirmative action policies and plans in the near future.

You will generally have one year from the effective date of the rule to prepare a compliant, written affirmative action plan and have it approved by the registration agency. Before that, you should be aware that the new nondiscrimination requirements will take effect within 180 days of the effective date of the rule.

We recommend that all apprenticeship plan sponsors should act now to incorporate the new protections into your equal opportunity pledges, selection procedures, affirmative action programs, and all other aspects of your program. We also recommend adopting currently recommended preventive steps outlined above, as they will soon be mandatory.

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If you have any questions about this proposed rule or how it may affect your business, please contact the author at [SSchaecher@fisherphillips.com](mailto:SSchaecher@fisherphillips.com) or 303.218.3650, or contact your Fisher Phillips attorney.

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*This Legal Alert provides an overview of a proposed new federal regulation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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