



# Labor Department Finalizes Apprenticeship Program Discrimination Rule

Insights

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The U.S. Department of Labor (USDOL) has finalized a rule expanding nondiscrimination and affirmative action requirements in apprenticeship programs registered with the USDOL or state apprenticeship agencies. Program sponsors face staggered implementation of the rule's provisions beginning in just a few short weeks – on January 18, 2017 – so the time to come into compliance is now.

## Brief Background

In 1937, the National Apprenticeship Act authorized the USDOL to develop and enforce labor standards to protect individuals participating in certain registered apprenticeship programs. The government began adding nondiscrimination requirements in 1963, but the regulations have not been updated since 1978.

## Differences And Similarities To Proposed Rule

A year ago, the USDOL proposed changes to modernize equal employment opportunity regulations for apprenticeship programs by adding protected classifications and specifying the affirmative steps sponsors must take to ensure equal opportunity. Just as with the proposed rule, the final rule prohibits discrimination based on age (40 or older), genetic information, sexual orientation, and disability in addition to discrimination based on race, color, religion, national origin, and sex. The rule final also specifies that sex discrimination includes discrimination based on pregnancy and gender identity.

Unlike the proposed rule, however, the final rule requires sponsors conducting workforce analyses to group their apprenticeship programs by occupational title, rather than by industry, and to conduct utilization analyses at the major occupation level. In another variation from the proposal, the final rule provides that sponsors and registration agencies will work together to conduct availability and utilization analyses. The final rule provides more time for sponsors to comply with some provisions by staggering the effective date.

## Compliance Dates

Dates by which existing sponsors must implement some of the more significant provisions are as follows:

Effective January 18, 2017

The addition of protected classifications will first affect sponsors' recordkeeping, selection, retaliation and complaint procedures. Selection procedures must be facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age, genetic information, and disability by this date. Retaliation on any of these bases will be prohibited. Sponsors must notify all applicants and apprentices of their right to file a discrimination complaint with the registration agency and the procedures for doing so.

Effective July 17, 2017

By July 17, sponsors must refrain from discriminating on any of the protected bases; publish and post an updated equal opportunity pledge; conduct outreach and recruitment efforts without regard to race, sex, ethnicity, or disability status; and implement measures against harassment on any of the protected bases.

Effective January 18, 2019

Two years after the rule's effective date, sponsors must start issuing invitations to self-identify as an individual with a disability and conducting orientation sessions, informational meetings, and anti-harassment trainings. By this time, sponsors must also conduct an initial workforce analysis for race, sex, ethnicity, and disability representation, review personnel practices for compliance, and draft a written affirmative action program for individuals with disabilities as well as for race, sex, and ethnicity.

At the first compliance review after January 18, 2017

At the time of their regular compliance review and with the assistance of their registration agency, sponsors must analyze availability in the labor market and utilization in the sponsor's apprenticeship program by race, sex, ethnicity, and disability. If the data shows underutilization of minorities or women, the sponsor and agency must set a utilization goal (the rule sets a 7% utilization goal for individuals with disabilities).

### **What If Underutilization Is Found?**

If underutilization is found and a goal is set, the sponsor must determine if there are impediments to equal opportunity and, if so, carry out action-oriented programs to correct them.

### **Which Programs Are Exempt?**

As with the proposed rule, the final rule exempts apprenticeship programs with fewer than five apprentices from the affirmative action requirements, although these programs remain subject to the rule's other provisions. The registration agency may exempt larger programs if they have an approved equal employment opportunity program (which now must include individuals with disabilities).

### **What Should You Do Now?**

Sponsors need to quickly familiarize themselves with the recordkeeping, selection, retaliation, and complaint procedures provisions of the final rules, and review and update their existing policies and procedures to be ready by the January 18, 2017 deadline for compliance. While President-elect Trump has expressed his dislike of government regulations, it is difficult to predict which regulations he might take issue with, when, and to what extent.

Although the new affirmative action requirements might get some attention, they do not take effect for two years, so much can happen between now and then. The modernization of the regulations to add protected classifications consistent with existing law is not likely to be undone, and the implementation deadlines for those provisions are not far away.

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 finalized 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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