

NEW YORK STATE APPRENTICESHIP TRAINING

Labor Law Article 23

Regulatory Impact Statement

1. Statutory authority:

The National Apprenticeship Act (“Fitzgerald Act”), enacted in 1937 [29 U.S.C. 50], authorizes the Federal government, in cooperation with the states, to oversee the nation's apprenticeship system. Under Federal regulations, a State Apprenticeship Agency (SAA) may apply to the Secretary of Labor for recognition of its training standards for Federal purposes. Since 1978, the U.S. Department of Labor’s (USDOL) Office of Apprenticeship has recognized the New York State Department of Labor as the State agency responsible for approving, registering and monitoring apprenticeship programs throughout New York for the purpose of safeguarding apprentices’ welfare, establishing minimum labor standards, promoting apprenticeship as a system of training skilled workers and ensuring that apprenticeship programs conform to USDOL standards for Federal purposes.

Labor Law Article 23 was enacted to establish standards and procedures for registering apprenticeship training programs. Section 811(1)(j) authorizes the Commissioner of Labor to adopt rules and regulations necessary for the effective administration of those programs.

2. Legislative objectives:

Labor Law Article 23, section 810 proclaims that it is the public policy of the State to develop sound apprenticeship training standards and to encourage employers and labor to institute apprenticeship programs as a preferred method of training and preparing workers in New York through supervised training and education. The proposed amendments fulfill those legislative objectives and strengthen apprenticeship training programs by updating program standards, clarifying procedures and re-enforcing accountability of program sponsors in meeting State and Federal requirements.

3. Needs and benefits:

The 21st century economy demands a workforce with postsecondary education and training that develops skills necessary to respond to changing economic and business needs. Registered apprenticeship programs play an important role in meeting these demands by fostering talents and learning strategies that will enable workers to advance their skills and remain competitive in the global economy. Recognizing the mutual benefits of apprenticeship training for both employers and employees, New York State and many municipalities require employers to participate in registered programs to qualify for public work.

For employers, benefits include:

- Skilled workers trained to industry/employer specifications to produce quality results;

- Increased productivity due to well-developed on-the-job learning;
- Enhanced retention;
- A stable pipeline of skilled workers;
- An emphasis on safety training that may reduce worker compensation and employer liability costs.

For apprentices, benefits include:

- Immediate employment in jobs that usually pay higher wages and offer career growth opportunities;
- Higher quality of life and versatility in learning and skills;
- Portable credentials recognized throughout the state and nationally;
- Increased opportunities for advancement and future educational degrees.

To meet these growing economic demands 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. 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.

Finally, USDOL amended Federal regulations effective December 29, 2008, setting a two-year time frame for state agencies to make changes in State law, regulation,

and /or policy in order to comply with the Federal rules and receive continued recognition of their apprenticeship programs. Section 29.13(b)(9) of the Federal regulations provides that any significant modifications or departures from the Federal rule in State legislation, regulations, policies or operational procedures must be submitted to the Office of Apprenticeship for review and concurrence prior to implementation. Amendments to 12 NYCRR Part 601, adopted September 29, 2009, and these proposed revisions are submitted for that purpose.

4. Costs:

Costs to Employers and Labor:

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 public or private work projects. The proposed rule will not impose any significant additional costs on sponsors in administering their apprenticeship programs, although some slight increases in training costs may occur.

Sponsors of group programs with either a participating union or association of employers will be required to identify their signatory members and provide a copy of their collective bargaining agreement or association agreement on request to the Department. Since those documents will usually have been executed prior to application for registration, sponsors will not be burdened with the additional expense. Employer associations who do not already have a written agreement will be asked to sign a form provided by the Department.

Section 601.5(c)(13) was added to conform to the Federal requirement that training 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 their 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. 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.

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.

Costs to the Department:

It is not anticipated that adoption of these rules will result in any additional costs for the agency.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility on local governments.

Participation in the apprenticeship program is voluntary. The regulations apply equally to all sponsors of registered apprentice programs, with certain exceptions for state agencies that do not meet the definition of an employer. Municipalities, school districts, fire districts and others who currently serve or will apply to serve as program sponsors for apprenticeship training programs will be required to comply with the new rule.

6. Paperwork:

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; and
- (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.

Programs registered in other states or the USDOL's Office of Apprenticeship seeking reciprocity in New York must submit an application to the Department and provide verification from the registration agency that the program is in good standing. In addition, section 601.15(a) provides that sponsors seeking reciprocal approval must provide proof of State unemployment, disability and workers' compensation insurance coverage; verification of current registration by the state or Federal agency and the names of apprentices and program signatories who will be working in the State.

Most of the documentation is satisfied by completion of a form provided by the Department or may be transmitted electronically. With the exception of sponsors opting for the alternative approaches to apprentice training, it is anticipated that the impact of

providing additional paperwork will be minimal, since the requirements of the proposed rule relate to documents that have been completed prior to registration or are used or maintained by the sponsor in the ordinary course of business.

7. Duplication:

No duplication of rules was identified. The proposed rule achieves compliance with Federal regulations [29 CFR Part 29], simplifies or clarifies previous revisions to Part 601 of Title 12 or incorporates Department policies and practices that have been previously used but not covered in Part 601.

8. Alternatives:

The Department solicited comments from sponsors, stakeholders and interested parties at public forums conducted on January 28, 2010, May 14, 2010, and September 14, 2010. In addition, 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 adoption of the current rule.

Since the majority of revisions reflect changes mandated by Federal regulations, there are few practical alternatives to adopting these proposals. A few comments suggested removing the requirement for formal training in adult learning styles since

journeyworkers often had several years of experience in training apprentices, while one commentator requested elimination of the re-certification requirement for existing programs. Since these additions reflect Federal directives, however, they have been retained in this proposal. A number of comments received have resulted in some modification to the Federal mandates and Department policies.

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). Many comments 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.

Section 601.5(c)(13) was added to meet the Federal requirement that training shall be conducted by qualified personnel and instructors providing related and supplemental instruction who meet the Department of Education’s 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, or by receiving instruction through national training academies previously recognized by USDOL as meeting this requirement.

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, USDOL has determined that the time-based approach to training did not fit many occupations and industries seeking to use the apprenticeship model. 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)]. Several comments received suggested that might have an adverse effect on smaller programs or those whose work is largely seasonal, resulting in a lower completion rate when compared to 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.

The proposed rule also contains new time frames adjusted to meet the needs of both sponsors and the Department. The period of time for receiving comments from a union that is not participating in a program proposed for registration has been expanded from 30 to 45 days [601.4(e)]; group sponsors must notify the Department within 90 days of any changes in their membership or signatories [601.5(g)] where no time limit had previously been specified; modifications to material elements of the Apprenticeship

Agreement must receive Department approval prior to implementation, while minor changes may be submitted within 30 days after their effective date [601.5(b)(15)]; 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 to program applications was added [601.4(b)(5)].

Section 601.15 addresses the Federal requirement that, for Federal purposes, State Agencies must accord reciprocal approval to apprentices and programs registered in other states or by USDOL's Office of Apprenticeship. In order to avoid giving these programs an unfair advantage in bidding on Federal projects, the Federal rule requires that they abide by the host state's wage and hour provisions and apprentice ratio standards [29 CFR 29.13(b)(7)]. In order to maintain the safety and quality of apprenticeship programs, the proposed rule requires applicants seeking reciprocity to submit proof of their registration, meet requirements for good standing and provide proof of insurance coverage applicable to programs registered in New York.

In response to comments received, the proposed rule also contains provisions for posting trade updates on the Department's website with a time period for comments [601.4(f)]; the publication of comments on the website [601.4(f)]; and an appeal process for applications that have been denied registration [601.4(b)(8) and (9)].

9. Federal standards:

Federal regulations effective December 29, 2008, set a two-year time frame for State agencies to make changes in State law, regulation, and /or policy in order to comply

with the Federal rules in order to receive continued recognition of their apprenticeship programs for Federal purposes. Section 29.13(b)(9) of the Federal regulations provides that any significant modifications or departures from the Federal rule in State legislation, regulations, policies or operational procedures must be submitted to the Office of Apprenticeship for review and concurrence prior to implementation. Amendments to Part 601 of Title 12, adopted September 29, 2009, and this proposal have been submitted for that purpose.

10. Compliance schedule:

Revisions to Part 601 of Title 12 will take effect on filing this proposal. Participants in the registered apprenticeship program will be able to comply with the revised regulations on the effective date. Applicants will be able to provide the information required, while existing Sponsors can provide any new documentation during regularly scheduled monitoring visits or at the time of re-certification.