
Date: April 30, 2019

To: The Honorable Roger Roth
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 217 West, State Capitol
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FROM: Caleb Frostman, Secretary – Designee
Department of Workforce Development

SUBJECT: **Federal Equal Employment Opportunity Standards for Apprenticeship Programs
Chs. DWD 295-296 (Clearinghouse Rules No. 19-003)**

Introduction

The Department of Workforce Development (“DWD”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DWD will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

Rule Content

Chapter DWD 296 (Federal Equal Opportunity Standards for Apprenticeship Programs) is promulgated pursuant to ch. 106, Stats. and prescribes the policies and procedures to promote equality of opportunity in apprenticeship programs registered with the department. This rule repeals and recreates ch. DWD 296 to align with federal regulations (29 CFR 29 and 29 CFR 30) and state statute. Wisconsin is recognized as a state apprenticeship agency organized under 29 CFR 29.13 and is required by federal regulation to incorporate the changes made under 29 CFR 29 and 29 CFR 30.

The U.S. Department of Labor, Office of Apprenticeship, updated 29 CFR 29 and 29 CFR 30 to include regulations that prohibit discrimination in registered apprenticeship programs because of age (40 or older), genetic information, sexual orientation, and disability. These categories are in addition to the existing regulations that prohibit discrimination in registered apprenticeship programs because of race, color, religion, national origin, and sex. Federal regulations also require sponsors to provide equal opportunity in apprenticeship. State agencies with recognized apprenticeship programs are required to update administration rules to reflect federal regulations.

The rule differs from the current rule by:

- Creating the definitions "ADA," "affirmative action plan," "apprentice," "EEO," "ethnic group" or "ethnicity," "genetic information," "individual with a disability," "journeyworker," "major life activities," "physical or mental impairment," "pre-apprenticeship program," "qualified applicant or apprentice," "reasonable accommodation," "registered," "respondent," "UGESP," and "Wisconsin equal rights division."
- Amending the definition "affirmative action program" to align with federal regulations.
- Repealing the definitions "agency," "commission," "secretary of labor," "minority count," and "female count" because those terms are no longer used in ch. DWD 296.
- Amending the definitions "apprenticeship program," "department," "employer," and "sponsor" to reflect proper citation.

The rule also does all the following:

- Requires sponsors to invite applicants to self-identify as an individual with a disability at various times in the application and hiring process and requires sponsors to make a one-time invitation to apprentices currently in registered apprenticeship programs.
- Improves and clarifies the affirmative steps employers and sponsors shall take to ensure equal opportunity in their registered apprenticeship program.
- Requires sponsors to analyze their workforce and take affirmative actions to employ individuals with a disability.
- Establishes a utilization goal of 7% for individuals with a disability within a sponsor's registered apprenticeship programs.
- Requires sponsors to conduct a workforce analysis by occupation and availability analysis by major occupation group.
- Clarifies certain minimum outreach and recruitment efforts that are required for all sponsors, and additional efforts that sponsors with affirmative action programs will take if they find themselves to be underutilizing members of a protected class.
- Requires a sponsor to assign an individual to oversee the sponsor's equal employment opportunity efforts.
- Allows sponsors to use any method of selecting apprentices that complies with the UGESP, rather than using one of four specified methods under the current rule.
- Requires sponsors to conduct periodic orientation and information sessions for those connected with the registered apprenticeship programs, including anti-harassment training.
- Allows the department to sanction noncompliant sponsors by suspending their right to register new apprentices while they implement corrective affirmative action plans. Under current law, the department is authorized only to deregister noncompliant sponsors.
- Specifies exactly what sponsors are required to do for outreach recruitment.
- Provides more flexibility for sponsors to use any selection method for apprentices, as long as it is not discriminatory. Current rule requires the sponsor to use one of four selection methods.
- Streamlines and simplifies sponsor's obligations while maintaining broad and effective equal employment opportunity protections for applicants or apprentices in a registered apprenticeship program.

The rule provides sponsors 180 days from January 18, 2019 to comply with equal opportunity standards applicable to all sponsors; and, sponsors registering after January 18, 2019, to comply with this obligation

upon registration or within 180 from January 18, 2019, whichever is later. In addition, the rule provides sponsors bring their program into compliance with the requirements under this chapter within two years of January 18, 2018 and sponsors registered after January 18, 2018 shall comply with the requirements within two years after the date of registration.

The update to s. DWD 295.02 is technical in nature and updates cross references to the new sections in ch. DWD 296.

Public Hearing

The department held one public hearing in Madison on February 20, 2019. One person, John Mielke representing ABC of Wisconsin, attended the hearing, spoke and provided written comments. John Schulze attended the hearing but did not speak.

DWD's Rule Changes in Response to Comments from the Rules Clearinghouse and Public Hearing

The department reviewed the comments received during the public hearing and the department's response is as follows:

Comment: Sponsors (who are not employers) should not be subject to enforcement actions described in DWD 296.30 for employment practices prohibited by the rule (DWD 296.04) undertaken by individual employers.

Response: Current language in the rule reflects the requirements under federal law for Wisconsin to maintain recognition as a state apprenticeship agency. The department does not have the authority to provide an exemption to Wisconsin sponsors and continue to maintain federal recognition; therefore, no changes to the rule were made.

Note: Because the sections were renumbered from the hearing draft, s. DWD 296.30 is now renumbered s. DWD 296.15.

Comment: DWD 296.20 requires sponsors to use selection procedures approved by the department and meeting the requirements under 29 CFR 30.10(b). Current selection procedures vary by trade and sponsor. As a practical matter, the department will need to conduct validity testing for each occupational title and provide the results of that validity test.

Response: The comment does not request a change to a rule; therefore, no changes were made.

Note: Because the sections were renumbered from the hearing draft, s. DWD 296.20 is now renumbered s. DWD 296.10.

Comment: Sponsors are required to compare the demographic composition of the sponsor's apprenticeship (by occupational title) to the demographic characteristics of an estimate of qualified individuals available in a sponsor's relevant recruitment area. Because ABC of Wisconsin Apprenticeship and Training Trust operates a statewide apprenticeship program, they assume the relevant recruitment area would be the entire state.

Response: The comment does not request a change to a rule; therefore, no changes were made.

The department incorporated all changes as recommended by the rule clearinghouse with the exception of following:

Section 5 Clarity, Grammar, Punctuation and Use of Plain Language

j. The agency should replace "or describe" with "to describe" in s. DWD 296.04 (2) (b).

Because the department renumbered most sections in the rule, s. DWD 296.04 (2) (b). was renumbered s. DWD 296.03 (2) (b) 1. b. The agency replaced "or describe" to "that describe."

1. "Constitute unlawful harassment" should be "constitutes unlawful harassment" in s. DWD 296.04 (2) (d) 1. b.

Because the department renumbered most sections in the rule, s. DWD 296.04 (2) (d) 1. b. was renumbered s. DWD 296.03 (2) (d) 1. b. The sentence reads "..and the ~~type~~ types of conduct that constitute unlawful harassment.."

p. "Apprentices" should be plural and not possessive in s. DWD 296.04 (5) (a).

Because the department renumbered most sections in the rule, s. DWD 296.04 was renumbered s. DWD 296.03. The agency deleted s. DWD 296.04 (5) all together and s. DWD 296.04 (6) was renumbered s. DWD 296.03 (5).

z. The agency should add clarifying words such as "shall be" after "the utilization goal established in this paragraph" in s. DWD 296.14 (1).

Because the department renumbered most sections in the rule, s. DWD 296.14 (1) was renumbered s. DWD 296.07 (1) and reads:

"The utilization goal established in this paragraph shall act as a benchmark against which a sponsor shall measure ~~against~~ the representation of individuals with disabilities in a the sponsor's...."

As renumbered, the department:

- Amended s. DWD 295.02 (2) (b) 23. by adding the reference to s. DWD 296.03 (3) and created a Note.
- Amended s. DWD 296.02 (4) by adding a period at the end of the sentence.
- Amended s. DWD 296.02 (11) (d) by removing "the participation in clinical research that includes genetic services, or" because it is duplicative.
- Amended s. DWD 296.02 (14) by removing "reading" because it is duplicative.
- Amended s. DWD 296.02 (21) by adding a comma after (8) and before Stats.
- Amended s. DWD 296.03 (2) (b) 1. by replacing "required in" with "prescribed under."
- Amended ss. DWD 296.03 (1), (2) (d) 3. and (3), 296.06 (3) (b), 296.14 (1) by removing "because" and replacing with "on the basis" to align with federal language.
- Amended s. DWD 296.03 (2) (a) 1. by changing "obligation" to "obligations" and removing "section" and replacing with "chapter."
- Amended s. DWD 296.03 (2) (b) by adding "In addition, a sponsor shall require that individuals connected with the administration or operation of the apprenticeship program take the necessary action

to aid the sponsor in meeting its nondiscrimination and affirmative action obligations under this section" to align with federal language.

- Amended s. DWD 293.03 (4) (b) by adding "whichever is later" at the end of the paragraph to align with federal language.
- Amended s. DWD 296.04 (1) (a) 2. by adding "unless such program was adopted to circumvent the requirements of this paragraph" to align with federal language.
- Amended s. DWD 296.05 (6) by rephrasing the following to align with federal language: "To determine the rate of utilization, a sponsor, working with the department, shall group each occupation title in the registered apprenticeship program by major occupation group and compare the racial, sex, and ethnic representation within each major occupation group to the racial, sex, and ethnic representation available in the relevant recruitment area, as determined in sub. (5)."
- Amended s. DWD 296.10 (1), 296.11 (2) and 296.13 (5) by adding a "s." before "DWD."
- Amended s. DWD 296.10 (2) (note) by replacing "reads:" with "requires" because language is not verbatim.
- Amended s. 296.22 (3) by replacing "online" with "resources."
- Amended s. DWD 296.14 (1) (b) 3. by removing "that occurred" from the first sentence.
- Amended s. DWD 296.14 (2) by adding language required under federal regulations relating to written notice for filing a complaint.
- Amended s. DWD 296.15 (2) (b) 2. By changing "state" with "start" in the last sentence.
- Amended s. DWD 296.19 by adding "With the approval from the U.S. department of labor's office of apprenticeship, the..."

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Environmental Impact

This rule will have no negative environmental impact.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The rule reflects changes under federal regulations 29 CFR 29 (Labor Standards for the Registration of Apprenticeship) and 29 CFR 30 (Equal Employment Opportunity in Apprenticeship). Prior to an update in January 2017, the federal regulations were last revised in 1978, prohibiting discrimination based on race, sex, color, religion and national origin and requiring sponsors with more than five apprentices to develop and implement a written affirmative action plan for minorities and the inclusion of female apprentices. Currently, these regulations are intended to provide for more uniform training of apprentices and promote equal opportunity in apprenticeship.

Comparison with Rules in Adjacent States

Minnesota operates a recognized state apprenticeship agency organized under 29 CFR 29.13 (Minn. Stat. Ch. 178). Illinois, Iowa and Michigan have not established state apprenticeship agencies and registered apprenticeship in those states operates under federal law only.

Summary of Factual Data and Analytical Methodologies

The department is recognized by the U.S. Department of Labor as a state apprenticeship agency under 29 CFR 29.13. Department staff reviewed state statute and implemented the requirements under 29 CFR 29 and 29 CFR 30 to maintain this recognition.

Analysis and Supporting Document used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

The rule will have no significant economic impact on small businesses as defined in s. 227.114 (1), Stats.

Effect on Small Business

The proposed rule will have no significant economic effect on small businesses as defined in s. 227.114 (1), Stats.