

PART IV. APPRENTICESHIP AND TRAINING COUNCIL

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CHAPTER 81. EQUAL OPPORTUNITY IN APPRENTICESHIP PROGRAMS

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Authority

The provisions of this Chapter 81 issued under section 4 of The Apprenticeship and Training Act (43 P. S. § 90.4), unless otherwise noted.

Source

The provisions of this Chapter 81 adopted June 23, 1971, 1 Pa.B. 1500, amended through March 16, 1979, 9 Pa.B. 814, unless otherwise noted.

Cross References

This chapter cited in 34 Pa. Code § 83.3 (relating to eligibility and procedure for council registration); 34 Pa. Code § 83.7 (relating to deregistration of council-registered programs); and 34 Pa. Code § 83.10 (relating to compliance).

GENERAL PROVISIONS**§ 81.1. Purpose.**

The purpose of the policies and procedures set forth in this chapter is to promote equality of opportunity in apprenticeship by prohibiting discrimination based on race, color, religion, national origin or sex in apprenticeship programs, by requiring affirmative action to provide equal opportunity in such apprenticeship programs, and by coordinating such policies and procedures with other equal opportunity programs.

§ 81.2. Scope.

This chapter sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the Council. These policies and procedures apply to the recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship, and the procedures established provide for review of apprenticeship programs, for registering apprenticeship programs, and for deregistering noncomplying apprenticeship programs.

§ 81.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Apprenticeship program—A program registered with the Council and evidenced by a Certificate of Registration or other appropriate document as meeting the apprenticeship standards of the Council.

Council—The Apprenticeship and Training Council of the Commonwealth.

Director—Any authorized person legally appointed to supervise the activities of the Council.

Employer—Any person or organization employing an apprentice whether or not the apprentice is enrolled with such person or organization or with some other person or organization.

Minority—One of four major ethnic groups other than Caucasian, namely Negro, American Indian, Oriental and Spanish American or a person, regardless of race, who is handicapped with a non-job-related disability. The term “Spanish American” or “Spanish-surnamed American” is deemed to include all persons of Mexican, Puerto Rican, Spanish or Cuban origin.

Nonjob-related disability—Any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in, or has been engaged in.

Sponsor—Any person or organization operating an apprenticeship program, irrespective of whether the person or organization is an employer.

EQUAL OPPORTUNITY STANDARDS

§ 81.11. Obligation of sponsors.

Each sponsor of an apprenticeship program shall be responsible for the following:

- (1) The recruitment, selection, employment, and training of apprentices during their apprenticeship, without discrimination because of race, color, religion, national origin, sex or nonjob-related disability.
- (2) The uniform application of rules and regulations concerning apprentices, including but not limited to, equality of wages, periodic advancement, promotion, assignment of work, job performance, rotation among all work processes of the trade, imposition of penalties or other disciplinary action, and all other aspects of apprenticeship program administration by the program sponsor.
- (3) The taking of affirmative action to provide equal opportunity in apprenticeship, including adoption of an affirmative action plan as required by this chapter.

§ 81.12. Equal opportunity pledge.

Each sponsor of an apprenticeship program shall include in its standards the following equal opportunity pledge:

The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religion, national origin, sex or non-job-related disability. The sponsor shall take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the *Code of Federal Regulations*, Part 30 and equal employment opportunity regulations of the Commonwealth of Pennsylvania.

Cross References

This section cited in 34 Pa. Code § 81.13 (relating to programs currently registered).

§ 81.13. Programs currently registered.

Each sponsor of a program registered with the Council shall, within 6 months following the effective date of this chapter, take the following actions:

- (1) Include in the standards of its apprenticeship program the equal opportunity pledge prescribed in § 81.12 (relating to equal opportunity pledge).
- (2) Adopt an affirmative action plan as required in this chapter.
- (3) Adopt a selection procedure as required in this chapter. A sponsor adopting one of the selection methods specified in §§ 81.32—81.34 (relating to selection of apprentices) shall prepare, and have available for submission upon request, copies of its amended standards, affirmative action plans and selection procedure. A sponsor adopting a selection method under § 81.35 (relating to alternative selection methods) shall submit to the Council copies of its standards, affirmative action plan, and selection procedure.

§ 81.14. Sponsors seeking new registration.

A sponsor of a program seeking new registration with the Council shall submit copies of its proposed standards, affirmative action plan, selection procedures, and such other information as may be required. The program will be registered if such standards, affirmative action plan and selection procedure meet the requirements of this chapter.

§ 81.15. Programs subject to approved equal employment opportunity plans.

A sponsor shall not be required to adopt an affirmative action plan or a selection procedure as specified in this chapter if it submits to the Council satisfactory evidence that it is subject to an equal employment opportunity program providing for the selection of apprentices and for affirmative action in apprenticeship including goals and timetables for women and minorities which has been approved as meeting the requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000e et seq.) or Executive Order 11246, as amended (30 FR 12319; 32 FR 12986) and the implementing regulations published in 29 CFR Chapter XIV, and 41 CFR, Chapter 60; provided, that programs approved, modified, or renewed subsequent to the effective date of this amendment will qualify for this exception only if the goals and timetables for minorities and women for the selection of apprentices provided for in such programs are equal to or greater than the goals required under this part.

§ 81.16. Programs with fewer than five apprentices.

A sponsor of a program in which fewer than five apprentices are indentured will not be required to adopt a written affirmative action plan or a selection procedure as specified in this chapter; provided that such program was not adopted to circumvent the requirements of this chapter.

AFFIRMATIVE ACTION PLANS**§ 81.21. Affirmative action defined; adoption of plan.**

(a) Affirmative action is not mere passive nondiscrimination. It includes procedures, methods and programs for the identification, positive recruitment, training and motivation of present and potential minority and female apprentices. It is action which will equalize opportunity in apprenticeship so as to follow full utilization of the work potential of minorities and women. The overall result to be sought is equal opportunity in apprenticeship for all individuals participating in or seeking entrance to the nation's labor force.

(b) The commitment of a sponsor to equal opportunity in recruitment, selection, employment and training of apprentices shall include the adoption of a written affirmative action plan.

§ 81.22. Outreach and positive recruitment.

(a) An acceptable affirmative action plan shall include adequate provision for outreach and positive recruitment that would reasonably be expected to increase minority and female participation in apprenticeship by expanding the opportunity of minorities and women to become eligible for apprenticeship selection. In order to achieve these objectives, sponsors shall undertake activities such as those listed in subsection (b). It is not contemplated that each sponsor necessarily will include all of the listed activities in its affirmative action program. The scope of the affirmative action program will depend on all the circumstances including the size and type of the program and its resources; however, the sponsor shall be required to undertake a significant number of appropriate activities in order to enable it to meet its obligation under this chapter.

(b) The affirmative action plan shall set forth the specific steps the sponsor intends to take in the following areas:

(1) Dissemination of information concerning the nature of apprenticeship, availability of apprenticeship, opportunities, sources of apprenticeship applications and the equal opportunity policy of the sponsor. For programs accepting applications only at specified intervals, such information shall be disseminated at least 30 days in advance of the earliest date for application at each interval. For programs customarily receiving applications throughout the year, such information shall be regularly disseminated but not less than semiannually. Such information shall be given to the Council, local schools, employment service offices, women's centers, public or private rehabilitation centers and community organizations which can effectively reach minorities and women, and published in newspapers which are circulated in the minority community and among women, as well as the general areas in which the program sponsor operates.

(2) Participation in annual workshops conducted by employment service agencies for the purpose of familiarizing school, employment service, and other appropriate personnel with the apprenticeship system and current opportunities therein.

(3) Cooperation with local school boards and vocational education systems to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs.

(4) Internal communication of the equal opportunity policy of the sponsor in such a manner as to foster understanding, acceptance, and support among the sponsor's various officers, supervisors, employees, and members and to encourage such persons to take the necessary action to aid the sponsor in meeting its obligations under this chapter.

(5) Engaging in programs such as outreach for the positive recruitment and preparation of potential applicants for apprenticeships. Where appropriate and feasible, such programs shall provide for pretesting experience and training. If no such programs are in existence, the sponsor shall seek to initiate these programs. In initiating and conducting such programs, the sponsor may be required to work with other sponsors and appropriate community organizations. The sponsor shall also initiate programs to prepare women and encourage women to enter traditionally male programs.

(6) In order to encourage the establishment and utilization of programs of preapprenticeship, preparatory trade training, or others designed to afford related work experience or to prepare candidates for apprenticeship, a sponsor shall make appropriate provision in its affirmative action plan to assure that those who complete such programs are afforded full and equal opportunity for admission into the apprenticeship program.

(7) Utilization of journeymen to assist in the implementation of the affirmative action program of the sponsor.

(8) Granting advance standing or credit on the basis of previously acquired experience, training, skills or aptitude for all applicants equally.

(9) Admission to apprenticeship programs of persons whose age exceeds the maximum age for admission to the program, where such action is necessary to assist the sponsor in achieving its affirmative action obligations.

(10) Such other action as to ensure that the recruitment, selection, employment, and training of apprentices during apprenticeship shall be without discrimination because of race, color, religion, national origin, sex or non-job-related disability. This may include general publication of apprenticeship opportunities and advantages in advertisements, industry reports, articles, and the like; use of present minority and female apprentices and journeypersons as recruiters; career counseling; periodic auditing of affirmative action programs and activities; and development of reasonable procedures between the sponsor and employers of apprentices to ensure that equal employment opportunity is being granted including reporting systems, on site reviews, briefing sessions,

and the like. The affirmative action program shall set forth the specific steps the sponsor intends to take in the above areas under this section.

Cross References

This section cited in 34 Pa. Code § 81.42 (relating to public notice of eligibility pools).

§ 81.23. Goals and timetables—when required.

(a) A sponsor adopting one of the selection methods specified in §§ 81.32 and 81.33 (relating to selection on basis of rank from pool of eligible applicants; random selection from pool of eligible applicants) and which determines on the basis of the analysis described in § 81.24 (relating to analysis to determine if deficiencies exist) that it has deficiencies in terms of underutilization of minorities or women—minority and nonminority—or both, in the craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for the admission of minority and female—minority and nonminority—applicants into the eligibility pool.

(b) A sponsor adopting one of the selection methods specified in §§ 81.34 and 81.35 (relating to selection from pool of current employees; alternative selection methods) and which determines on the basis of the analysis described in § 81.24 (relating to analysis to determine if deficiencies exist) that it has deficiencies in terms of the underutilization of minorities or women, or both, in the craft or crafts represented by the program shall include in its affirmative action plan percentage goals and timetables for the selection of minorities or women—minority and nonminority—or both, applicants for the apprenticeship program.

(c) “Underutilization” as used in this section refers to the situation where there are fewer minorities or women—minority and nonminority—or both, in the particular craft or crafts represented by the program than would reasonably be expected in view of an analysis of the factors specified in § 81.24 (relating to analysis to determine if deficiencies exist). Where, on the basis of such analysis, the sponsor determines that it has no deficiencies, goals, and timetables need not be established; however, where no goals and timetables are established, the affirmative action plan shall include a detailed explanation why no goals and timetables have been established.

(d) Where the sponsor fails to submit goals and timetables as part of its affirmative action plan or submits goals and timetables which are unacceptable, and the Council determines that the sponsor has deficiencies in terms of underutilization of minorities or women—minority and nonminority, the Council shall establish goals and timetables applicable to the sponsor for the admission of minority and female—minority and nonminority—applicants into the eligibility pool or selection of apprentices, as appropriate. The sponsor shall make good faith efforts to attain these goals and timetables.

Cross References

This section cited in 34 Pa. Code § 81.33 (relating to random selection from pool of eligible applicants); 34 Pa. Code § 81.34 (relating to selection from pool of current employees); and 34 Pa. Code § 81.35 (relating to alternative selection methods).

§ 81.24. Analysis to determine if deficiencies exist.

The determination by the program sponsor as to whether goals and timetables need to be established shall be based on an analysis of at least the following factors, which analysis shall be set forth in writing as part of the affirmative action plan:

- (1) The minority and female—minority and nonminority—population of the labor market area in which the program sponsor operates.
- (2) The size of the minority and female—minority and nonminority—labor force in labor market area of the sponsor.
- (3) The percentage of minority and female—minority and nonminority—participation as apprentices in the particular craft as compared with the percentage of minorities in the labor force in the labor market area of the sponsor.
- (4) The percentage of minority and female—minority and nonminority—participation as journeymen employed by the employer or employers participating in the program as compared with the percentage of minorities in the labor market area of the sponsor and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices.
- (5) The general availability of minorities and women—minority and nonminority—with present or potential capacity for apprenticeship in the labor market area, of the sponsor.

Cross References

This section cited in 34 Pa. Code § 81.23 (relating to goals and timetables—when required); 34 Pa. Code § 81.33 (relating to random selection from pool of eligible applicants); and 34 Pa. Code § 81.34 (relating to selection from pool of current employees).

§ 81.25. Goals and timetables—establishment, attainment.

Goals and timetables shall be established on the basis of an analysis by the sponsor of its underutilization of minorities and women and its entire affirmative action program. A single goal for minorities and a separate single goal for women is acceptable unless a particular group is employed in a substantially disparate manner, in which case separate goals shall be established for such group. Such separate goals would be required, for example, if a specific minority group of women were underutilized even though the sponsor had achieved its standards for women generally. In establishing the goals, the sponsor should consider the results which could be reasonably expected from its good faith efforts to make its overall affirmative action program work. Compliance with these requirements shall be determined by whether the sponsor has met its goals within its timetable,

or failing that, whether it had made good faith efforts to meet its goals and timetables. Its “good faith efforts” will be judged by whether it is following its affirmative action program and attempting to make it work, including evaluation and changes in its program where necessary to obtain the maximum effectiveness toward the attainment of its goals; however, in order to deal fairly with program sponsors and with women who are entitled to protection under the goals and timetables requirements, during the first 12 months after the effective date of this chapter, the program sponsor would generally be expected to set a goal for women for the entering-year class at a rate which is not less than 50% of the proportion women comprise of the work force in the program sponsor’s labor market area and to set a percentage goal for women in each class beyond the entering class which is not less than the participation rate of women currently in the preceding class. At the end of the first 12 months after the effective date of this chapter, sponsors are expected to make appropriate adjustments in goal levels. In establishing the goals, the sponsor should consider the results which could be reasonably expected from its good faith efforts to make its overall affirmative action program work. Compliance with these requirements will be determined by whether the sponsor has met its goals within its timetable or, failing that, whether it had made good faith efforts to meet its goals and timetables. Its “good faith efforts” will be judged by whether it is following its affirmative action program and attempting to make it work, including evaluation and changes in its program where necessary to obtain the maximum effectiveness toward the attainment of its goals.

Cross References

This section cited in 34 Pa. Code § 81.33 (relating to random selection from pool of eligible applicants); and 34 Pa. Code § 81.34 (relating to selection from pool of current employees).

§ 81.26. Availability of information.

The United States Department of Labor will make available to program sponsors data and information on minority and female—minority and nonminority—population and labor force characteristics for each Standard Metropolitan Statistical Area, and for other special areas as appropriate.

SELECTION OF APPRENTICES

§ 81.31. Obligation of sponsors.

(a) In addition to the development of a written affirmative action plan to ensure that minorities have an equal opportunity for selection as apprentices and otherwise insure the prompt achievement of full and equal opportunity in apprenticeship, each sponsor shall further provide in its affirmative action program that the selection of apprentices shall be made in accordance with this chapter.

(b) Each sponsor shall adopt one of the methods for selecting apprentices specified in §§ 81.32—81.35 (relating to selection of apprentices).

§ 81.32. Selection on basis of rank from pool of eligible applicants.

The sponsor who adopts the method of selecting apprentices on the basis of rank from a pool of eligible applicants shall comply with the following:

(1) *Selection.* A sponsor may select apprentices from a pool of eligible applicants on the basis of the rank order of scores of applicants on one or more qualification standards where there is a significant statistical and practical relationship between rank order of scores and performance in the apprenticeship program. In demonstrating such relationship, the sponsor shall follow the procedures set forth in the United States Department of Labor Order of September 9, 1968 (33 FR 14392, September 24, 1968) covering the validation of employment tests of contractors and subcontractors subject to the provision of Executive Order 11246, as amended.

(2) *Creation of pool of eligibles.* A pool of eligibles shall be created from applicants who meet the qualifications of minimum legal working age or from applicants who meet qualification standards in addition to minimum legal working age and the sponsor's minimum physical requirements; provided that any additional qualification standards conform with the following requirements:

(i) *Qualification standards.* The qualification standards, and the procedures for determining such qualification standards shall be stated in detail and shall provide criteria for the specific factors and attributes to be considered in evaluating applicants for admission to the pool. The score required under each qualification standard for admission to the pool shall also be specified. All qualification standards, and the score required on any standard for admission to the pool, shall be directly related to job performance, as shown by a significant statistical and practical relationship between the score on the standards, and the score required for admission to the pool, and performance in the apprenticeship program. In demonstrating such relationships, the sponsor shall follow the procedures set forth in 41 CFR Part 60-3. Qualifications shall be considered as separately required so that the failure of an applicant to attain the specified score under a single qualification standard shall disqualify the applicant from admission to the pool.

(ii) *Aptitude tests.* Any qualification standard for admission to the pool consisting of aptitude test scores shall be directly related to job performance, as shown by significant statistical and practical relationships between the score on the aptitude tests, and the score required for admission to the pool, and performance in the apprenticeship program. In determining such relationships, the sponsor shall follow the procedures set forth in 41 CFR Part 60-3. This requirement shall also be applicable to aptitude tests utilized by a program sponsor which are administered by a State employment service

agency; a private employment agency, or any other person, agency, or organization engaged in the selection or evaluation of personnel.

(iii) *Educational attainments.* All educational attainments or achievements as qualifications for admission to the pool shall be directly related to job performance, as shown by a significant statistical and practical relationship between the score, and the score required for admission to the pool, and performance in the apprenticeship program. In demonstrating such relationships, the sponsor shall meet the requirements of 41 CFR Part 60-3. School records or the results of general education development tests recognized by the State or local public instruction authority shall be evidence of educational achievement. Education requirements shall be applied uniformly to all applicants.

(3) *Oral interviews.* Oral interviews shall not be used as a qualification standard for admission into an eligibility pool; however, once an applicant is placed in the eligibility pool, and before he is selected for apprenticeship from the pool, the applicant may be required to submit to an oral interview. Oral interviews shall be limited only to such objective questions as may be required to determine the fitness of applicants to enter the apprenticeship program, but shall not include questions relating to qualifications previously determined in gaining entrance to the eligibility pool. When an oral interview is used, each interviewer shall record his questions, the general nature of answers, and shall prepare a summary of any conclusions. Applicants rejected from the pool of eligibles on the basis of an oral interview shall be given a written statement of such rejection, the reasons therefor, and the appeal rights available to the applicant.

(4) *Notification of applicants.* All applicants who meet the requirements for admission shall be notified and placed in the eligibility pool. The program sponsor shall give each rejected applicant notice of his rejection including the reasons for his rejection, the requirements for admission to the pool of eligibles, and the appeal rights available to the applicant.

(5) *Goals and timetable.* The sponsor shall establish, when required, percentage goals and timetables for the admission of minorities and women—minority and nonminority—to the pool of eligibles in accordance with the provisions of §§ 81.23—81.25 (relating to affirmative action plans). A sponsor shall be deemed to be in compliance with this paragraph if it meets its goals or timetables or if it makes a good faith effort to meet these goals and timetables. In the event of the failure of the sponsor to meet its goals and timetables, it shall be given an opportunity to demonstrate that it has made every good faith effort to meet its commitments. All the actions of the sponsor shall be reviewed and evaluated in determining whether such good faith efforts have been made.

Cross References

This section cited in 34 Pa. Code § 81.13 (relating to programs currently registered); 34 Pa. Code § 81.23 (relating to goals and timetables—when required); 34 Pa. Code § 81.31 (relating to obligation of sponsors); 34 Pa. Code § 81.33 (relating to random selection from pool of eligible applicants); 34 Pa. Code § 81.34 (relating to selection from pool of current employees); 34 Pa. Code § 81.35 (relating to alternative selection methods); 34 Pa. Code § 81.41 (relating to existing list of eligibles); and 34 Pa. Code § 81.53 (relating to qualification standards).

§ 81.33. Random selection from pool of eligible applicants.

The sponsor who adopts the method of a random selection of apprentices from a pool of eligible applicants shall comply with the following:

(1) *Selection.* A sponsor may select apprentices from a pool of eligible applicants on a random basis. The method of random selection shall be subject to approval by the Council. Supervision of the random selection process shall be by an impartial person or persons selected by the sponsor, but not associated with the administration of the apprenticeship program. The time and place of the selection and the number of apprentices to be selected shall be announced. The place of the selection shall be open to all applicants and the public. The names of apprentices drawn by this method shall be posted immediately following the selection at the place of business of the sponsor.

(2) *Other requirements.* The sponsor shall meet the requirements of §§ 81.23—81.25 and § 81.32(2)—(5).

Cross References

This section cited in 34 Pa. Code § 81.13 (relating to programs currently registered); 34 Pa. Code § 81.23 (relating to goals and timetables-when required); 34 Pa. Code § 81.31 (relating to obligation of sponsors); 34 Pa. Code § 81.41 (relating to existing list of eligibles), and 34 Pa. Code § 81.53 (relating to qualification standards).

§ 81.34. Selection from pool of current employes.

The sponsor who adopts the method of a selection of apprentices from a pool of current employes shall comply with the following:

(1) *Selection.* A sponsor may select apprentices from an eligibility pool of the workers already employed by the program sponsor in a manner prescribed by a collective bargaining agreement where such exists, or by the sponsor's established promotion policy. The sponsor adopting this method of selecting apprentices shall establish goals and timetables for the selection of minority and female apprentices, unless the sponsor concludes, in accordance with the provisions of §§ 81.23—81.25 (relating to affirmative action plans) that it does not have deficiencies in terms of underutilization of minorities or women—minority and nonminority—or both, in the apprenticeship of journeymen crafts represented by the program.

(2) *Goals and timetables.* The sponsor shall meet the requirements of § 81.32(5) (relating to selection on basis of rank from pool of eligible applicants).

Cross References

This section cited in 34 Pa. Code § 81.13 (relating to programs currently registered); 34 Pa. Code § 81.31 (relating to obligation of sponsors); and 34 Pa. Code § 81.53 (relating to qualification standards).

§ 81.35. Alternative selection methods.

A sponsor may select apprentices by any other method than those specified in this chapter, including its present selection method, if such sponsor complies with the following:

(1) *Selection method and goals and timetables.* Within 90 days of the effective date of this chapter, the sponsor shall submit to the Council a detailed statement of the revised selection method it proposes to use along with the rest of its written affirmative action program including, where required, its percentage goals and timetables for the selection of minority or female—minority and nonminority—or both, applicants for apprenticeship and its written analysis, upon which such goals and timetables, or lack thereof, are based. The establishment of goals and timetables shall be in accordance with the provisions of § 81.23 (relating to goals and timetables—when required). The sponsor may not implement any such selection method until the Council has approved the selection method as meeting the requirements of this section and has approved the remainder of its affirmative action program including its goals and timetables. If the Council fails to act upon the selection method and the affirmative action program within 30 days of its submission, the sponsor may implement the selection method on the effective date of this chapter.

(2) *Qualification standards.* Apprentices shall be selected on the basis of objective and specific qualification standards. Examples of such standards are fair aptitude tests, school diplomas, age requirements, occupationally essential physical requirements, fair interviews, school grades and previous work experience. Where interviews are used, adequate records shall be kept including a brief summary of each interview and the conclusions on each of the specific factors, such as motivation, ambition, and willingness to accept direction which are part of the total judgment.

(3) *Goals and timetables.* The sponsor shall meet the requirements of § 81.32(5) (relating to selection on basis of rank from pool of eligible applicants). Where a sponsor, despite its good faith efforts, fails to meet its goals and timetables within a reasonable period of time, the sponsor may be required to make appropriate changes in its affirmative action program to the extent necessary to obtain maximum effectiveness towards the attainment of its goals. The sponsor may also be required to develop and adopt an alternative selection method,

including a method prescribed by the Council where it is determined that the failure of the sponsor to meet its goals is attributable in substantial part to the selection method. Where the sponsor's failure to meet its goals is attributable in substantial part to its use of a qualification standard which had adversely affected the opportunities of minorities or women—minority and nonminority—or both, for apprenticeship, the sponsor may be required to demonstrate that such qualification standards are directly related to job performance in accordance with the provisions of § 81.32(2)(i) (relating to selection on basis of rank from pool of eligible applicants).

Cross References

This section cited in 34 Pa. Code § 81.13 (relating to programs currently registered); 34 Pa. Code § 81.23 (relating to goals and timetables—when required); 34 Pa. Code § 81.31 (relating to obligation of sponsors); 34 Pa. Code § 81.41 (relating to existing list of eligibles); and 34 Pa. Code § 81.53 (relating to qualification standards).

MAINTENANCE OF ELIGIBILITY LIST

§ 81.41. Existing list of eligibles.

A sponsor adopting a selection method under § 81.32, § 81.33 or § 81.35, and who determines that there are fewer minorities on its existing lists of eligibles than would reasonably be expected after an analysis to determine if deficiencies exist, shall discard all existing eligibility lists upon adoption of such selection method. Thereafter new eligibility pools shall be established.

§ 81.42. Public notice of eligibility pools.

(a) Sponsors shall establish a reasonable period of not less than 2 weeks for accepting applications for admission to an apprenticeship program.

(b) Lists of eligibility pools shall be posted at the place of business of the sponsor.

(c) There shall be at least 30 days of public notice in advance of the earliest date for application for admission to an apprenticeship program. Reference should be made to § 81.22 (relating to outreach and positive recruitment).

§ 81.43. Retention of applicants on list; reporting for work.

(a) Applicants who have been placed in a pool of eligibles shall be retained on lists of eligibles subject to selection for a period of 2 years. Applicants may be removed from the list at an earlier date by their request or following their failure to respond to an apprentice job opportunity given by registered return receipt mail notice.

(b) Applicants who have been accepted in the program shall be afforded a reasonable period of time in light of the customs and practices of the industry for reporting for work. All applicants shall be treated equally in determining such

period of time. It shall be the responsibility of the applicant to keep the sponsor informed of his current mailing address.

(c) A sponsor may restore to the list of eligibles an applicant who has been removed from the list at his request or who has failed to respond to an apprenticeship job opportunity.

RECORDS

§ 81.51. Obligations of sponsors.

Each sponsor shall keep adequate records including a summary of the qualifications of each applicant, the basis for evaluation and for selection or rejection of each applicant, the records pertaining to interviews of operation of the apprenticeship program, including, but not limited to, job assignment, promotion, demotion, layoff, or termination, rates of pay, or other forms of compensation or conditions of work, and any other records pertinent to a determination of compliance with this chapter as may be required by the Council. The records pertaining to individual applicants, whether selected or rejected, shall be maintained in such manner as to permit identification of minority and female—minority and nonminority—participants.

§ 81.52. Affirmative action plans.

Each sponsor shall retain a statement of its affirmative action plan for the prompt achievement of full and equal opportunity in apprenticeship, including all data and analysis made pursuant to the requirements of this chapter. Sponsors shall periodically review their affirmative action plan and update it where necessary.

§ 81.53. Qualification standards.

Each sponsor shall maintain evidence that its qualification standards have been validated in accordance with the requirements in §§ 81.32—81.35 (relating to selection of apprentices).

§ 81.54. Maintenance of records.

The records required by this chapter and any other information relevant to compliance with this chapter shall be maintained for 5 years and made available upon request to the Council, United States Department of Labor or authorized representatives.

§ 81.55. Records of the Council.

The Council shall keep adequate records, including registration requirements, approved individual program standards, standards registration actions, deregistration actions, program compliance reviews and investigations, individual program ethnic count, total apprenticeship ethnic count and any other records pertinent to

a determination of compliance with this chapter as many as may be required by the United States Department of Labor and shall report such information to the United States Department of Labor, through the Office of the State Supervisor of the Bureau of Apprenticeship and Training, United States Department of Labor, semiannually.

COMPLIANCE

§ 81.61. Conduct of compliance reviews.

(a) The Council will regularly conduct systematic reviews of apprenticeship programs in order to determine the extent to which sponsors are complying with this chapter. The Council will also conduct compliance reviews when circumstances, including receipt of complaints not referred to a private review body pursuant to § 81.73(a) (relating to processing of complaints), so warrant, and take appropriate action regarding programs which are not in compliance with the requirements of this chapter.

(b) Compliance reviews will consist of comprehensive analysis and evaluations of each aspect of the apprenticeship program, including on site investigations and audits.

§ 81.62. Compliance review as part of registration.

Sponsors seeking reregistration or new registration shall be subject to a compliance review by the Council as part of the registration process.

§ 81.63. Voluntary compliance.

Where the compliance review indicates that the sponsor is not operating in accordance with this chapter, the Council will notify the sponsor in writing of the results of the review and make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before undertaking any sanctions pursuant to this chapter. In the case of sponsors seeking new registration, the Council will provide appropriate recommendations to the sponsor to enable it to achieve compliance for registration purposes.

§ 81.64. Noncompliance with Federal or State requirements.

A pattern or practice of noncompliance by a sponsor or where the sponsor is a joint apprenticeship committee, by one of the parties represented on such committee with Federal or State laws or regulations requiring equal opportunity may be grounds for the imposition of sanctions in accordance with §§ 81.81—81.83 (relating to sanctions) if the noncompliance is related to the equal employment opportunity of apprentices or graduates of such an apprenticeship program under this chapter. The sponsor shall take positive steps to assist and cooperate with employers and unions in fulfilling their equal employment opportunity obligations.

COMPLAINT PROCEDURES**§ 81.71. Filing.**

(a) Any apprentice or applicant for apprenticeship who believes that he has been discriminated against on the basis of race, color, religion, national origin, sex or nonjob-related disability with regard to apprenticeship or that the equal opportunity standards with respect to his selection have not been followed in the operation of an apprenticeship program may, by the apprentice or by an authorized representative, file a complaint with the Council, or with a private review body established pursuant to § 81.72 (relating to establishment of private review body). The complaint shall be in writing and shall be signed by the complainant. It shall include the name, address and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances of the failure to apply the equal opportunity standards provided for in this chapter.

(b) The complaint shall be filed not later than 180 days from the date of the alleged discrimination of specified failure to follow the equal opportunity standards; and, in the case of complaints filed directly with review bodies designated by program sponsors to review such complaints, any referral of such complaints by the complainant to the Council shall occur within the time limitation stated in this subsection or 30 days from the final decision of such review body, whichever is later. The time may be extended by the Council for good cause shown.

(c) Subsection (a) supersedes 1 Pa. Code §§ 35.9 and 35.10 (relating to formal complaints generally).

§ 81.72. Establishment of private review body.

Sponsors are encouraged to establish fair, speedy and effective procedures for a review body to consider complaints of failure to follow the equal opportunity standards. A private review body established by the program sponsor for this purpose should number three or more responsible persons from the community serving in this capacity without compensation. Members of the review body should not be directly associated with the administration of an apprenticeship program. Sponsors may join together in establishing a review body to serve the needs of programs within the community.

Cross References

This section cited in 34 Pa. Code § 81.71 (relating to filing).

§ 81.73. Processing of complaints.

(a) When the sponsor has designated a review body for reviewing complaints, and if the Council determines that such review body will effectively enforce the equal opportunity standards, the Council, upon receiving a complaint, will refer the complaint to the review body.

(b) The Council will, within 30 days following the referral of a complaint to the review body, obtain reports from the complainant and the review body as to the disposition of the complaint. If the complaint has been satisfactorily adjusted, and there is no other indication of failure to apply equal opportunity standards, the case shall be closed and the parties appropriately informed.

(c) When a complaint has not been resolved by the review body within 90 days or where, despite satisfactory resolution of the particular complaint by the review body, there is evidence that the equal opportunity practices of the apprenticeship program are not in accordance with this chapter, the Council may conduct such compliance review as found necessary, and shall take all necessary steps to resolve the complaint.

(d) If no review body exists, the Council may conduct such compliance review as found necessary in order to determine the facts of the complaint, and obtain such other information relating to compliance with this chapter as the circumstances warrant.

(e) Sponsors shall provide written notice of the compliant procedure set forth in this section to all applicants for apprenticeship and all apprentices.

Cross References

This section cited in 34 Pa. Code § 81.61 (relating to conduct of compliance reviews).

SANCTIONS

§ 81.81. When sanctions will be imposed.

Where the Council, as a result of a compliance review or other reason, determines that there is reasonable cause to believe that an apprenticeship program is not operating in accordance with this chapter and voluntary corrective action has not been taken by the program sponsor, it will institute proceedings to deregister the program or refer the matter to the United States Department of Labor for referral to the United States Attorney General with recommendations for the institution of a court action by the United States Attorney General under Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000e et seq.).

Cross References

This section cited in 34 Pa. Code § 81.64 (relating to noncompliance with Federal or State requirements); and 34 Pa. Code § 81.82 (relating to deregistration procedures).

§ 81.82. Deregistration procedures.

Deregistration proceedings shall be conducted in accordance with the following procedures:

- (1) The Council will notify the sponsor, in writing, that a determination of reasonable cause has been made under § 81.81 (relating to when sanctions will be imposed) and that the apprenticeship program may be deregistered unless,

within 15 days of the receipt of the notice, the sponsor requests a hearing. The notification shall specify the facts on which the determination is based.

(2) If, within 15 days of the receipt of the notice, the sponsor mails a request for a hearing, the Director will convene a hearing.

(3) The Director will make a final decision on the basis of the record before him, which shall consist of the compliance review file and other evidence presented and, if a hearing was conducted, the proposed findings and recommended decision of the hearing officer. The Director may allow the sponsor a reasonable time to achieve voluntary corrective action. If the decision of the Director is that the apprenticeship program is not operating in accordance with this chapter, the apprenticeship program shall be deregistered. In each case in which deregistration is ordered, the Director may make public notice of the order and will notify the sponsor and the complainant, if any, and the United States Department of Labor. The Council shall inform any sponsor whose program has been deregistered that it may appeal such deregistration to the United States Department of Labor in accordance with the procedures of 29 CFR 30.15.

Cross References

This section cited in 34 Pa. Code § 81.64 (relating to noncompliance with Federal or State requirements).

§ 81.83. Conduct of hearings.

Hearings shall be conducted in accordance with the following procedures:

(1) Within 10 days of his receipt of a request for a hearing, the Director shall designate a hearing officer. The hearing officer shall give reasonable notice of such hearing by registered mail, return receipt requested, to the sponsor. The notice shall include a reasonable time and place of hearing, a statement of the provisions of this chapter pursuant to which the hearing is to be held, and a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

(2) The hearing officer will regulate the course of the hearing. Hearings will be informally conducted. Every party shall have the right to counsel, and a fair opportunity to present the party's case including such cross-examination as may be appropriate in the circumstances. Hearing officers shall make their proposed findings and recommended decisions to the Director upon the basis of the record before them.

(3) Paragraph (2) supersedes 1 Pa. Code §§ 35.189, 35.201 and 35.202 (relating to manner of conduct of hearings; certification of record without proposed report; and proceedings in which proposed reports are prepared).

Cross References

This section cited in 34 Pa. Code § 81.64 (relating to noncompliance with Federal or State requirements).

MISCELLANEOUS PROVISIONS**§ 81.91. Special processing for compliance review or complaint processing.**

If, in the judgment of the Council, a particular situation warrants and requires special processing and either expedited or extended determination, it will take the steps necessary to permit such determination if it finds that no person or party affected by such determination will be prejudiced by such special processing.

§ 81.92. Reinstatement of program registration.

Any apprenticeship program deregistered pursuant to this chapter may be reinstated upon presentation of adequate evidence to the Director that the apprenticeship program is operating in accordance with this chapter.

§ 81.93. Intimidatory or retaliatory acts.

Any intimidation, threat, coercion or retaliation by or with the approval of any sponsor against any person for the purpose of interfering with any right or privilege secured by Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000e et seq.), Executive Order 11246, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this chapter shall be considered noncompliance with the equal opportunity standards of this chapter. The identity of complainants will be kept confidential except to the extent necessary to carry out the purpose of this chapter, including the conduct of any investigation, hearing or judicial proceeding arising therefrom.

§ 81.94. Nondiscrimination.

The commitments contained in the affirmative action program of the sponsor are not intended and shall not be used to discriminate against any qualified applicant or apprentice on the basis of race, color, religion, national origin or sex.

§ 81.95. Requests for exemptions.

(a) Requests for exemption from any provision of this chapter shall be made in writing to the Director and shall contain a statement of reasons supporting the request. Exemptions may be granted for good cause.

(b) The Council shall immediately notify the United States Department of Labor of any such exemptions granted affecting a substantial number of employees and the reasons therefor.

(c) Subsection (a) supersedes 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

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