

CHAPTER 83. WELFARE OF APPRENTICES

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Authority

The provisions of this Chapter 83 issued under The Apprenticeship and Training Act (43 P. S. §§ 90.1—90.10), unless otherwise noted.

Source

The provisions of this Chapter 83 adopted March 16, 1979, 9 Pa.B. 814, unless otherwise noted.

§ 83.1. Purpose and scope.

(a) The act authorizes and directs the Council to adopt rules and regulations to promote the furtherance of standards of apprenticeship and training to safeguard the welfare of apprentices, to bring together employers and labor for the establishment of programs of apprenticeship, and to cooperate with Federal and State agencies which carry on programs related to apprenticeship.

(b) The purpose of this chapter is to set forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by prescribing policies and procedures concerning the registration of acceptable apprenticeship programs with the Department of Labor and Industry, Apprenticeship and Training Council. These labor standards and procedures cover the registration, cancellation and deregistration of apprenticeship programs and of apprenticeship agreements and matters relating thereto.

§ 83.2. Definitions.

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

Act—The Pennsylvania Apprenticeship and Training Act (43 P.S. §§ 90.1—90.10).

Apprentice—A worker at least 16 years of age who is engaged in learning a recognized skilled trade, as defined in this chapter, under standards of apprenticeship fulfilling the requirements of § 83.5 (relating to standards of apprenticeship), including persons in the building construction industry using the tools of the trade except journeypersons.

Apprenticeship agreement—A written agreement between an apprentice and either his employer or an apprenticeship committee acting as agent for the employer, which agreement contains the terms and conditions of the employment and training of the apprentice.

Apprenticeship program—A written plan containing terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.

Cancellation—Either the deregistration by the Council of an apprenticeship program at the request of the program sponsor, the termination of an apprenticeship agreement at the request of an apprentice or formal deregistration proceedings by the Council resulting in the termination of an apprenticeship agreement or program.

Council—The Pennsylvania, Apprenticeship and Training Council.

Director—The Director of the Pennsylvania Apprenticeship and Training Council.

Employer—A person or organization located or doing business in this Commonwealth that employs an apprentice on a work site, whether or not such a person or organization is a party to an apprenticeship agreement or program.

Joint apprenticeship committee—A committee composed of an equal number of representatives of employers and employees, which has been established by an employer or group of employers and a bona fide collective bargaining agent or agents to conduct, operate or administer an apprenticeship program and enter into apprenticeship agreements with apprentices selected for employment under the particular program.

Non-joint apprenticeship sponsor—An apprenticeship program sponsor in which a bona fide collective bargaining agent does not participate or a union sponsored program in which the employer does not participate; it includes an individual non-agent, an apprenticeship program sponsored by one employer without the participation of a union; and a group non-joint sponsor, an apprenticeship program sponsored by two or more employers without the participation of a union.

Registration of an apprenticeship agreement—The acceptance and recording thereof by the Council as evidence of the participation of the apprentice in a particular registered apprenticeship program.

Registration of an apprenticeship program—The acceptance and recording of such program by the Pennsylvania Apprenticeship and Training Council as meeting the basic standards and requirements of the Council for approval of such program. Approval is evidenced by a Certificate of Registration.

Related instruction—An organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to his or her trade.

Resumption—The reinstatement of an apprentice to active status following suspension.

Sponsor—A person, association, committee or organization in whose name or title the apprenticeship program is or is to be registered, irrespective of whether such entity is an employer.

Suspension—Layoff of an apprentice due to lack of work, military leave or extended sick leave.

§ 83.3. Eligibility and procedure for Council registration.

(a) No apprenticeship program or agreement shall be eligible for Council registration unless the following apply:

(1) It is in conformity with the requirements of the chapter, and the training is in an apprenticeable occupation having the characteristics set forth in § 83.4 (relating to criteria for apprenticeable occupations).

(2) It is in conformity with the requirements of Chapter 81 (relating to equal opportunity in apprenticeship programs).

(b) Apprentices shall be individually registered under a registered program. Such registration shall be effected by submitting three copies of each apprenticeship agreement to the Council for approval. The Council will promptly determine whether the agreement conforms with the established standards. If the agreement does not so conform, the Council will authorize the Director to return the agreement to the Sponsor so that it can be modified or changed by the parties to the agreement so that it is in conformity.

(c) The Council shall be promptly notified by the Sponsor of the cancellation or suspension of any apprenticeship agreements, with cause for same, and of apprenticeship completions.

(d) Upon receipt of a request for registration of any apprenticeship program, the Council will promptly determine whether the standards of apprenticeship conform to the requirements of the act and this chapter, whether the proposed training is in an apprenticeable occupation, and whether the program is in conformity with the requirements of the State Plan for Equal Employment in Apprenticeship. If the program is approved, the Council will authorize the Director to register the program and issue a Certificate of Registration as evidence of registration.

(e) Modifications or changes to registered or certified programs shall be promptly submitted in writing to the Director and, if approved by the Council, shall be recorded and acknowledged as an amendment to the program.

(f) Documents and data required by this chapter in connection with a request for registration of an apprenticeship program shall be submitted in triplicate.

(g) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provide for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exer-

cised, written acknowledgement of union agreement or “no objection” to the registration is required. Where no such participation is evidenced and practiced, the employer or employers’ association shall simultaneously furnish to the union local, if any, which is the recognized or certified collective bargaining agent of the employes to be trained, a copy of its application for registration and of the apprenticeship program. In addition, upon receipt of the application and apprenticeship program, the Director shall promptly send by certified mail to such local union, another copy of the application and of the apprenticeship program together with notice that union comments will be accepted for 30 days after the date of the Director’s transmittal.

(h) Where the employes to be trained have no collective bargaining agent, an apprenticeship program may be proposed for registration by an employer or group of employers.

§ 83.4. Criteria for apprenticeable occupations.

An apprenticeable occupation is a skilled trade which possesses all of the following characteristics:

- (1) It is customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training.
- (2) It is clearly identified and commonly recognized throughout an industry.
- (3) It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience, not including the hours spent on related instruction.
- (4) It requires related instruction to supplement on-the-job training. Such instruction may be given in a classroom or through correspondence courses.
- (5) It involves the development of skill which is not restricted in application to products of any one company, but which is broad enough to be applied in like occupations throughout an industry.

Cross References

This section cited in 34 Pa. Code § 83.3 (relating to eligibility and procedure for Council registration).

§ 83.5. Standards of apprenticeship.

(a) An apprenticeship program, to be eligible for registration by the Council, shall be an organized, written plan embodying the term and conditions of employment, training and supervision of one or more apprentices in an apprenticeable occupation, as defined in this chapter, and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(b) The standards shall contain provisions concerning the following:

- (1) The employment and training of the apprentice in a skilled trade.

(2) A term of apprenticeship, not less than one year or 2,000 hours, consistent with training requirements as established by industry practice.

(3) An outline of work processes in which the apprentice will receive supervised work experience and training on-the-job, and the allocation of the approximate time to be spent in each major process.

(4) Provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of 144 hours for each year of apprenticeship is recommended. Such instruction may be given in a classroom, through trade, industrial or approved correspondence courses of equivalent value.

(5) A progressively increasing schedule of wages to be paid the apprentice. Wage rates shall be determined as follows: Where apprentice wage rates are established by collective bargaining agreement, they shall be accepted by the Council for apprentices covered by such agreements. Where wage rates are not established by collective bargaining agreements:

(i) The progressively increasing schedule of apprentice wage rates shall be expressed in terms of percentages of the journeyman hourly rate.

(ii) Such rates shall represent the minimum for each incremental period of apprenticeship.

(iii) The hourly rate for a journeyman for each trade included in a registered program shall be the average journeyman hourly rate applicable to the employer and shall be stated in terms of dollars and cents.

(iv) The entry wage shall not be less than the State minimum wage, where applicable, unless a higher wage is required by other applicable Federal law, State law or respective regulations.

(v) Modification of wage progression or journeyman wage shall be promptly reported to the Council.

(6) Periodic review and evaluation of the progress of the apprentice in job performance and related instruction and the maintenance of appropriate progress records.

(7) The ratio of apprentices to journeymen should be consistent with proper supervision, training, and continuity of employment or applicable provisions in collective bargaining agreements. The standard Pennsylvania Apprenticeship and Training Council ratio for Non-Joint programs shall be one apprentice employed for the first, second, third and fourth journeymen regularly employed; two apprentices for the fifth, sixth, seventh, eighth and ninth journeymen regularly employed; three apprentices for the tenth, eleventh, twelfth, thirteenth and fourteenth journeymen regularly employed, and so on in units of five journeymen regularly employed. Exemptions to the Pennsylvania Apprenticeship and Training Council's standard ratios may be granted upon written request and approval of the Council.

(8) A probationary period reasonable in relation to the full apprenticeship term, with full credit for such period toward completion of apprenticeship.

(9) Adequate and safe equipment facilities for training and supervision, and safety training for apprentices on the job and in related instruction.

(10) The required minimum qualifications for persons entering an apprenticeship program.

(11) The placement of an apprentice under an apprenticeship agreement. The agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement.

(12) The granting of advanced standing or credit for previously acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted.

(13) Transfer of employer's training obligation to another employer when the employer is unable to fulfill his obligation under the apprenticeship agreement, with consent of the apprentice and apprenticeship committee or program sponsor, with full credit to the apprentice for satisfactory time and training earned.

(14) Assurance of qualified training personnel and adequate supervision on the job.

(15) Recognition for successful completion of apprenticeship evidenced by an appropriate certificate.

(16) Identification of the registration agency.

(17) Provision for the registration, cancellation and deregistration of the program and requirement for the prompt submission of any modification or amendment thereto.

(18) Provision for registration of apprenticeship agreements, notice to the Council of persons who have successfully completed apprenticeship programs, and notice of cancellations and suspensions of apprenticeship agreements and cause therefore.

(19) Authority for the termination of an apprenticeship agreement during the probationary period by either party without stated cause.

(20) A statement that the program will be conducted, operated and administered in conformity with the Pennsylvania State Plan for Equal Employment Opportunity.

(21) Name and address of the appropriate authority under the program to receive, process and make disposition of complaints.

(22) Recording and maintenance of records concerning apprenticeship as may be required by the Council and applicable law.

Notes of Decisions

ERISA does not preempt Pennsylvania's prevailing wage and apprenticeship requirements insofar as they restrict the payment of apprenticeship wages to apprentices registered in approved programs. *Ferguson Electric Co. v. Foley*, 115 F.3d 237 (3d Cir. (Pa.) 1997); appeal denied 847 A.2d 1286 (Pa. 2004).

Cross References

This section cited in 34 Pa. Code § 83.2 (relating to definitions).

§ 83.6. Apprenticeship agreements.

The Apprenticeship Agreement shall contain the following provisions:

(1) Names and signatures of the contracting parties, apprentice and the program sponsor or employer, and the signature of a parent or guardian if the apprentice is a minor.

(2) The date of birth of the apprentice.

(3) Name and address of the program sponsor and registration agency.

(4) A statement of the trade or craft in which the apprentice is to be trained, and the beginning date and term of apprenticeship.

(5) A statement showing the number of hours to be spent by the apprentice in work on the job and the number of hours to be spent in related and supplemental instruction which is recommended to be not less than 144 hours per year.

(6) A statement setting forth a schedule of the work processes in the trade or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process.

(7) A statement of the graduated scale of wages to be paid the apprentice and whether or not the required school time shall be compensated.

(8) A statement providing for a specific period of probation during which the apprenticeship agreement may be terminated by either party to the agreement upon written notice to the registration agency.

(9) A statement providing that, after the probationary period, the agreement may be cancelled at the request of the apprentice, or may be suspended, cancelled, or terminated by the sponsor for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the Council of the final action taken.

(10) A reference incorporating as part of the agreement the standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement.

(11) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training without discrimination because of race, color, religion, national origin, sex and nonjob related disability.

(12) Name and address of the Pennsylvania Apprenticeship and Training Council as the agency to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established trade procedure or applicable collective bargaining provisions.

§ 83.7. Deregistration of Council-registered programs.

Deregistration of a program may be effected upon the voluntary action of the sponsor by a request for cancellation of the registration or upon reasonable cause by the Council instituting formal deregistration proceedings in accordance with the provisions of this chapter.

(1) *Request by sponsor.* Upon a written request by the sponsor, the Council may cancel the registration of an apprenticeship program by written acknowledgment of the request stating, but not limited to, the following matters:

(i) That the registration is cancelled at the request of the sponsor and giving the effective date of the cancellation.

(ii) That within 15 work days of the date of the acknowledgment, the sponsor shall notify apprentices of the cancellation and the effective date, and that the cancellation shall automatically deprive the apprentice of individual registration.

(2) *Formal deregistration for reasonable cause.* Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated and administered in accordance with the registered standards or the requirements of this chapter, except that deregistration proceedings for violation of equal opportunity requirements shall be processed under Chapter 81 (relating to equal opportunity in apprenticeship programs).

(3) *Nonconformity with regulations.* If it appears the program is not being operated in accordance with the registered standards or the requirements of the act or these regulations, the Director will so notify the program sponsor in writing.

(4) *Notice.* The notice shall be sent by registered or certified mail, with return receipt requested, state the shortcomings and the remedy required, and that a determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days.

(5) *Extensions.* Upon request by the sponsor for good cause, the 30 day period may be extended for up to an additional 30 day period. During the period for correction, the sponsor shall be assisted in every reasonable way to achieve conformity.

(6) *Failure to correct.* If the required corrective action is not effected within the allotted time, the director shall send a notice to the sponsor by registered or certified mail, return receipt requested, stating the following:

(i) That the notice is being sent under this section.

(ii) That certain stated deficiencies were called to the sponsor's attention and remedial measures requested, with dates of the occasions and letters, and that the sponsor has failed or refused corrections.

(iii) That based upon the stated deficiencies and failure of remedial action, a determination of reasonable cause has been made and that the pro-

gram may be deregistered unless, within 15 days of the receipt of this notice, the sponsor requests a hearing.

(iv) That if a hearing is not requested by the sponsor, the entire matter shall be submitted to the Council for a decision on the record with respect to deregistration.

(7) *Hearing.* If the sponsor requests a hearing, the Council shall convene a hearing in accordance with § 83.8 (relating to hearings) and shall make a final decision on the basis of the record before it.

(8) *Voluntary corrective action.* In its discretion, the Council may allow the sponsor a reasonable time to achieve voluntary corrective action. If the decision is that the apprenticeship program is not operating in accordance with the registered standards of requirements of this chapter, the apprenticeship program shall be deregistered. In each case where deregistration is ordered, the Council will notify the sponsor.

(9) *Deregistration.* Every order of deregistration shall contain a provision that the sponsor shall, within 15 work days of the effective date of the order, notify all registered apprentices of the deregistration of the program, the effective date and that the action automatically deprives the apprentice of his individual registration.

Source

The provisions of this § 83.7 corrected March 31, 1995, effective September 29, 1979, 25 Pa.B. 1166. Immediately preceding text appears at serial pages (40691) to (40693).

Cross References

This section cited in 34 Pa. Code § 83.8 (relating to hearings).

§ 83.8. Hearings.

(a) Within 10 days of receipt of a request for a hearing under § 83.7 (relating to deregistration of Council registered programs), the Council will give reasonable notice of the hearing by registered mail, return receipt requested, to the appropriate sponsor. The notice shall include the following provisions:

(1) A reasonable time and place of hearing.

(2) A statement of the provisions of this chapter under which the hearing is to be held.

(3) A concise statement of the matters under which the action forming the basis of the hearing is proposed to be taken.

(b) The Chairman of the Council will act as Hearing Officer. The Hearing Officer will regulate the course of the hearing. Hearings shall be informally conducted. Every party shall have the right to counsel and a fair opportunity to present its case, including the cross-examination as may be appropriate in the circumstances. The Council will make its findings and final decisions on the basis of the record before it.

Cross References

This section cited in 34 Pa. Code § 83.7 (relating to deregistration of Council—registered programs).

§ 83.9. Reinstatement of program registration.

An apprenticeship program deregistered under the act or this chapter may be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with the act and this chapter. The evidence shall be presented to the Council if the sponsor had not requested a hearing or an order of deregistration was entered pursuant to a hearing.

§ 83.10. Complaints.

(a) A controversy or difference arising under an apprenticeship agreement which cannot be resolved locally or which is not covered by a collective bargaining agreement may be submitted by an apprentice or authorized representative to the Council for review. Matters covered by a collective bargaining agreement shall be submitted and processed in accordance with the procedures therein provided.

(b) The complaint shall be in writing, signed by the complainant and submitted by the apprentice or an authorized representative within 60 days of receipt of the final local decision. The complaint shall set forth the specific problem, including relevant facts and circumstances. Copies of pertinent documents and correspondence shall accompany the complaint.

(c) The Council will render an opinion within 90 days after receipt of the complaint based upon the investigation of the matters submitted as may be found necessary and the record before it. During the 90 day period, the Director will make reasonable efforts to effect a satisfactory resolution between the parties involved. If so resolved, the parties will be notified that the case is closed. When an opinion is rendered, copies will be sent to interested parties.

(d) Nothing in this section may operate to prohibit the apprentice from electing to resort to any form or procedure, other than that of the registration agency, that may be available for the disposition of the complaint, or to institute appropriate court proceedings.

(e) This section does not apply to a complaint concerning discrimination or other equal opportunity matters. Those complaints shall be submitted and resolved under Chapter 81 (relating to equal opportunity in apprenticeship programs).

§ 83.11. Reciprocity.

Apprenticeship programs and agreements shall be registered under this chapter upon request of the sponsor with proof of registration elsewhere when they comply with the following:

- (1) They do not include the building or construction industry.

- (2) They have a joint apprenticeship committee on a multistate basis.
- (3) They are registered with either the Bureau of Apprenticeship and Training, United States Department of Labor or any other "recognized" State Apprenticeship Agency or Council under 29 CFR 29.12.

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