

OREGON STATE APPRENTICESHIP AND TRAINING COUNCIL
RULES & POLICY SUBCOMMITTEE
December 2, 2015

Summary

Our Steering Committee and Planning Committee are diligently working on preparations for the conference. We still need additional Planning Committee Members to help us with detail such as arranging programming and speakers; budgeting and financial support; logistics and media/marketing. The meeting of the Planning Committee is scheduled for Tuesday, December 15, 2015, 10:00 am – Noon at the Pacific Northwest Carpenters Institute, 4222 NE 158th Ave, Portland. Agenda items will include the conference theme, potential sessions and speakers. Volunteers are always welcome. Please feel free to attend if you are interested in helping to plan this event. If you are interested but cannot attend this meeting, contact any ATD staff member to express your interest and to be placed on the Planning Committee's mailing list.

V. Staff Reports

A. Division Management Reports

The overall number of active apprentices registered in Oregon increased to over 6,800. Female registrations are increasing and will soon reach 7%, minority participation has also continued to increase and is now close to 17%. Staff would like to see our programs collectively meet the 7% and 17% goals by the end of the fiscal year.

B. Compliance & Investigation Report – no report.

C. Reciprocity Report – no report.

D. Apprenticeship Committee Status Report

1. Overdue Wage Updates

Average journey wages in 20 standards have expired. Staff will continue to work with the programs. Committees will be cited to appear at the **March 2016** subcommittee meeting if their wages are not current by **February 1, 2016**.

2. Inactive Standards

One of the programs cited to appear for inactive standards has since registered an apprentice. Blount currently has three standards reported for inactivity. Staff will continue to work with them and if no apprentice is registered in the next three months, we will recommend dissolution at the **March 2016** Council meeting.

3. Exception #10 (Small Employer/Family Member) Revisions

As stated at prior subcommittee meetings, a number of committees have incorporated ORS 660.139 as a part of their selection method or as an exception to their selection method. This statute give a committee that ability to allow a small employer to select a family member or current employee who has reached the top of the committee's eligibility list to have a "right of first refusal" on selecting that individual as an apprentice. Staff has noticed over time that in adopting this provision, some committees used language in their standards that was not compliant with the language of the statute. Staff has spent the past six months working with those committees to either eliminate the ORS 660.139 provision or make changes in their standards to be in compliance with the statute.

The majority of committees availing themselves of the ORS 660.139 provision have brought their standards into compliance. Two committees still have not made the required change due s. Staff will continue to work with the programs. Citations to appear at March 2016 Rules and Policy Subcommittee meeting will be issued if those programs have not agreed to bring their standards into compliance by February 1, 2016. If programs are required to attend the subcommittee meeting, staff will ask Council

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either to completely remove the ORS 660.139 language from their standards or ask that Council rewrite that portion of the standard to conform to the statutory language.

4. Owner-Apprentice Policies

Five committees have not made the required changes to their policies. Staff will continue to work with the programs. If the changes have not been made, they will be cited to appear at the **March 2016** Council meeting.

E. Veterans Program Report

The US Department of Veteran's Affairs has made a nationwide decision to contract with only one State Agency to administer their VA programs. In Oregon, this means that they will contract with the Department of Education – Higher Education Coordinating Council, thus ending the Apprenticeship and Training Division contract on **August 31, 2016**. Subcommittee members asked the Director to request that a representative from the Department of Education to attend the March 2016 Rules and Policy Subcommittee meeting to provide an overview of how their office will be administering VA benefits for registered apprentices.

F. Pacific Northwest Apprenticeship Education Conference.

VI. Follow-up Reports from Previous Council Meetings

A. Implementation of HB 3025 (Ban the Box)

House Bill 3025, effective January 1, 2016, makes it an unlawful employment practice for an employer to exclude an applicant from an initial interview solely because of a past criminal conviction. The practice is subject to enforcement by the Bureau of Labor and Industries (BOLI). HB 3025 does not prevent an employer from considering an applicant's conviction history when making a hiring decision. Additionally, the provisions of the bill do not apply in circumstances where federal, state or local law requires the consideration of an applicant's criminal history, to law enforcement agencies, criminal justice system employers or an employer seeking a nonemployee volunteer.

The law restricts employers from inquiring about an applicant's criminal background during the initial stages of the application process. The legislation prohibits an employer from requiring an applicant:

- To disclose on an employment application a criminal conviction;
- To disclose, prior to an initial interview, a criminal conviction; or
- If no interview is conducted, to disclose, prior to a conditional offer of employment, a criminal conviction.

The law does not prohibit employers from notifying applicants that they will be subject to a criminal background check at a later step in the hiring process. Employers you are still allowed to consider criminal convictions when making final hiring decisions.

What do you need to do to be compliant?

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- Remove the criminal conviction question from your apprenticeship applications.
- Adjust your hiring process to conduct a criminal background check after the initial interview.

JATCs are considered employer for purposes of the bill. If an employer (or JATC) does not conduct an interview, the employer is prohibited from requiring an applicant to disclose a criminal conviction prior to a conditional offer. The question should be removed from applications forms and JATCs not ask about convictions until the initial interview and/or until a job offer has been made. If you have any questions about Oregon's "Ban the Box" law or need an updated job application, please contact our Technical Assistance for Employers' division or consult with private legal counsel.

City of Portland "Ban the Box"

Please note that on November 25, 2015, the Portland City Council passed ordinance# 187459, its own 'Ban the Box' ordinance that would prohibit employers from asking criminal history questions to an applicant prior to a conditional offer of employment. The ordinance is meant to lift barriers for past offenders seeking employment and reduce recidivism among these past offenders and reintegrate them into society.

There are some exemptions for employers regarding this new law, some of them include:

- Employer with fewer than six employees
- Employer is a law enforcement agency, in the criminal justice system, or seeking non-employee volunteer.
- If the position involves the direct access or provision of services to children, the elderly, persons with disabilities, persons with mental illness, or people with alcohol and drug dependence or substance abuse disorders.

This new ordinance for Portland goes into effect on July 1, 2016. The primary difference between HB 3025 and the City of Portland ordinance is when an employer may inquire about any criminal history. The Oregon state law prohibits asking the question prior to the first interview, Portland employers must wait until after a conditional offer of employment is made.

Under the City ordinance, once a conditional offer has been made to an applicant, the employer may then able to inquire into and consider their criminal background. In considering the relevance of an applicant's criminal background in relation to the job, this ordinance requires that employers assess the nature and gravity of the criminal offense, the time that has elapsed since the criminal offense took place, and the nature of the employment held or sought. Once considered, employer may rescind the conditional offer if necessary.

Hearings

- A. Interstate Trucking JATC (MA 1279)
 - Truck Driver (Heavy)

Program Representatives: Gary Hollands, Chair

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Recommendation to defer to the December 2016 Council meeting and review the committee's progress at that time.

B. Three Kings Environmental Request for Dual Registration

Representatives: Ron King, Owner
Sara Gourley, Oregon Columbia Laborers JATC
Sal Cortez, Oregon Laborers JATC

Recommendation to defer for consideration to the March 2016 Council meeting.

VIII. Discussion Items

A. Oregon Administrative Rules Update

a. Minimum Guideline Committee Membership, OAR 839-011-0074

The language was recently revised to state that only voting committee members could serve as representatives on Minimum Guideline Committees.

b. Cancellation Notices, OAR 839-011-0175

The language was recently revised to state that cancellation notices must be sent via certified mail, return receipt requested, mailed and addressed to the apprentice at least 22 days in advance. Staff would now like to modify the boiler plate language in Standards to eliminate the reference to certified mail.

B. Proposed Revisions to 29 CFR Part 30, Equal Employment Opportunity in Apprenticeship

On November 6, 2015, the United States Department of Labor, Office of Apprenticeship, issued proposed new rules on equal employment opportunity requirements and selection criteria for registered apprenticeship sponsors. States approved to act as agents of the federal Office of Apprenticeship for purposes of approving registered apprenticeship programs, such as Oregon, must conform to any rules adopted in this regard. The following is a very brief summary of the proposed regulations.

New Protected Classes: Added are classes of applicants and apprentices whom programs are required to protect from discrimination; these include persons aged over 40 and those with a disability under an ADA analysis. In addition, there may be no inquiry into, or discrimination based upon, sexual orientation or genetic traits. These classes must be added to the equal opportunity pledge in the Standards template. The disability category garners the most discussion and proposed regulation.

Protected Disability Class Requirements: Definition of a Qualified Applicant or Apprentice is revised to be "an individual who, with or without reasonable accommodation, can perform the essential functions of the apprenticeship program for which the individual applied or is enrolled."

Programs must monitor disabled applicants and apprentices:

- Include in the application an invitation to self-identify as disabled;
- Include, at the time of first dispatch, a form on which an applicant may self-identify as disabled;
- Annually, invite apprentices to self-identify as disabled;
- Collect data on participation by disabled applicants and apprentices; a 7% utilization goal is established.

The Revisions include proposed mandatory text for self-identification notices and new mandatory recordkeeping requirements are imposed. [§ 30.12 revised] Each Program will keep a separate file for each apprentice for whom there is a medical condition of history. ATD must also maintain an independent record of disability status.

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New Obligations for Each Program (JAC, JTC, JATC, and TATC): Each Program, regardless of size, will appoint an AA overseer to monitor and track its commitment to the Equal Employment Opportunity Pledge. Efforts to ensure fair access to apprenticeship are required.

Each Program will, annually, conduct an internal review of all aspects of its program for indices of EEO success or failure. Those with an AAWP will make corrections and publish periodic revisions to it. The Program will update its AAWP annually or biennially if it meets its utilization goals. The update need not be submitted for ATD for approval unless ATD requests it.

Each Program's Utilization Goals will be set as a percentage at least equal to an estimate, based upon Census and other records, of the number of qualified individuals in Program's recruitment area. *Note: This differs from the current OAR benchmark in which the goals are established based upon a reasonable expectation of attainment. This is more than mere semantical difference. Goals, currently, are set based upon numbers that can be rationally attained and incrementally advanced to meet the census numbers.*

Revision to Compliance: Comparative participation of Race, gender and ethnicity must be based upon Census data. To the extent utilization is computed, it must be done for women and each recognized racial or ethnic group. Goals must be established for each group where deficiency is found, but not for groups where no disparity is found. For example, if Hispanic participation meets census incidence in the Program's geographic area, there is no need to set Hispanic participation goals, but will set goals for other groups whose numbers fall short of the population percentage.

Revision to Selection Process Requirements

The revised section, 30.10, ***eliminates any distinction between types of selection process***, but continues to require that any alternative / direct entry procedure be included in the standards. The revision permits **any** method for selection, including Direct Entry, ***subject to ATD approval***, as long as the selection process meets certain criteria. It must either meet Uniform Guidelines on Employee Selection (UGESP – 41 CFR 60-31), [which requires a formal validation study] or, if that is impracticable, a selection process may be used as long as it is determined to have no disparate impact. If, retrospectively in a compliance review, the selection process is found to have disparate impact, the procedure should be modified or adjusted. *Note: the current system that identifies Direct Entry allows ATD to monitor the means by which a program uses it in a real-time manner.*

The proposed federal rules can be found at <https://www.federalregister.gov/articles/2015/11/06/2015-27316/apprenticeship-programs-equal-employment-opportunity>. Public comments on the proposed regulations must be submitted by January 5, 2016. Please address all written comments (including disk and CD-ROM submissions) to Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-5641, Washington, DC 20210.

The Division finds many of the proposed new regulations to be vague, unwieldy and potentially in violation of portions of the Americans with Disability Acts. The Division also finds that time for submitting comments on the proposed revisions to be incredibly short given that the regulations had not been reviewed or amended since 1977. We will be submitting a written request to the Office of Apprenticeship to extend the time for submission of written comments. The Division will also continue to review the proposed regulations and will submit comments to the Office of Apprenticeship in a timely fashion.

C. Traveling Training Agents and Average Wage Calculations – staff is still researching this topic.

IX. Pending Subcommittee Items Requiring Additional Research

None this quarter.

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- X. Council and Subcommittee Meeting Dates

- XI. Good of Apprenticeship
 - A. Subcommittee Member Reports - none

- XIII. Adjournment - 11:40am.