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Legal Background Briefings are prepared and updated periodically by the Legal Services Division of the Iowa Legislative Services Agency, a nonpartisan agency providing legislative drafting and research services to the committees and members of the Iowa General Assembly. The briefings provide background information regarding a particular area of law. Although a briefing may identify issues for consideration by the General Assembly, nothing contained in a briefing should be interpreted as advocating a particular course of action. The reader is cautioned against using information contained in a briefing to draw conclusions as to the legality of a particular behavior or set of circumstances.

Prepared by:
Kate O'Connor, Legal Counsel
Iowa Legislative Services Agency
State Capitol
Des Moines, Iowa 50319
515-281-6329
kate.oconnor@legis.iowa.gov

Legal Background Briefing on ...

United States Department of Labor — Industry-Recognized Apprenticeship Programs

Overview

This Briefing provides legal background relating to the federal registered apprenticeship program and the United States Department of Labor's final rule, effective May 11, 2020, that allows for qualified third-party entities to evaluate and recognize industry-recognized apprenticeship programs. Unless otherwise indicated, references in this Briefing to the Iowa Code are to the 2021 Iowa Code and references to the Code of Federal Regulations are current through September 11, 2020.

Background

An apprenticeship is a strategy of training an individual for a specific occupation using a structured program of paid on-the-job training and related instruction that is tied to a national skills standard. The registered apprenticeship program (RAP) is a long-standing federal program in which an apprenticeship program is registered with the Office of Apprenticeship (OA) at the United States Department of Labor (DOL), or with a DOL-approved state apprenticeship agency (SAA), and is operated by a sponsor such as an employer, labor union, industry group, or community college. To be eligible to be taught via an apprenticeship, an occupation must involve skills that are customarily learned through a structured program of on-the-job supervised learning; be clearly identified and commonly recognized throughout an industry; and

involve the progressive attainment of manual, mechanical, or technical skills and knowledge which, according to industry standards for the occupation, require a minimum of 2,000 hours of on-the-job training and supplementary instruction.¹ Prior to registering an apprenticeship program, the DOL or SAA evaluates the program to determine if it is in compliance with applicable federal standards. RAPs located in Iowa are registered with the DOL as Iowa does not have an SAA. The Iowa Economic Development Authority administers training grants awarded to RAPs as part of the Iowa Apprenticeship Act and the Future Ready Iowa Apprenticeship Program.^{2,3}

President Trump's Executive Order

In June 2017, President Trump issued an executive order in which he directed the Secretary of Labor (Secretary), in consultation with the Secretary of Education and the Secretary of Commerce, to consider proposing regulations to promote the development of apprenticeship programs by third parties, including industry groups, companies, nonprofit organizations, unions, and joint labor-management organizations.⁴ President Trump also directed the Secretary to establish a task force on apprenticeship expansion (task force) to identify strategies and proposals to promote apprenticeships, especially in sectors where apprenticeship programs are currently insufficient such as manufacturing, infrastructure, cybersecurity, and health care. The 20-member task force was comprised of individuals, including Governor Reynolds, representing companies, labor unions, trade associations, educational institutions, and government institutions. The task force submitted its final report⁵

to President Trump in May 2018, and provided recommendations in four policy areas including education and credentialing; attracting business to apprenticeship; expanding access, equity, and career awareness; and administrative and regulatory strategies to expand apprenticeship.

DOL Rulemaking

The DOL published a Notice of Proposed Rulemaking to allow the Administrator of the OA (Administrator) to recognize qualified third-party entities known as Standards Recognition Entities (SREs) that would be responsible for evaluating and recognizing Industry-Recognized Apprenticeship Programs (IRAPs).⁶ The DOL received over 300,000 comments.⁷ On March 11, 2020, the DOL published its final rule and the final rule became effective on May 11, 2020.⁸

SRE Qualifications

An SRE is described in the DOL's final rule as an entity that is recognized by the DOL as qualified to recognize apprenticeship programs as IRAPs. An SRE may be a trade, industry, or employer group or association; a corporation or other organized entity; an educational institution; a state or local government agency or entity; a nonprofit organization; a union; a joint labor-management organization; a certification and accreditation body or entity for a profession or industry; or a consortium or partnership of qualified entities.⁹

An entity must apply to the Administrator to be recognized as an SRE.¹⁰ To qualify to be recognized as an SRE, an entity must demonstrate that it has the resources to operate as an SRE for a minimum of five years; has the expertise to set competency-based standards for the training, structure, and curriculum for apprenticeship programs in the industries

and occupational areas in which the entity intends to function as an SRE; has the capacity and quality assurance processes and procedures to ensure that the IRAPs it recognizes comply with all applicable DOL and SRE requirements; has procedures in place to mitigate any potential conflicts of interest; has not been suspended or debarred from doing business with the federal government; can demonstrate impartiality by disclosing all entities that will be involved in any recognition activities and each entity's role and relationship with the SRE and the SRE's subsidiaries; and has the appropriate industry and occupational expertise and resources to recognize IRAPs in the geographical areas in which it intends to function as an SRE.¹¹

SRE Responsibilities and Requirements

SREs are responsible for recognizing and overseeing IRAPs. An SRE may recognize an IRAP in any industry sector except construction.¹² Historically, the construction industry has sponsored the majority of IRAPs and has therefore been excluded by the DOL's final rule from participating in IRAPs. An SRE may only recognize an apprenticeship program as an IRAP if the program meets certain requirements. An SRE's responsibilities include establishing policies and procedures for recognizing and validating an apprenticeship program's compliance in an impartial and consistent manner based on objective and merit-based criteria; reviewing and validating an apprenticeship program at the time it is initially recognized as an IRAP and annually thereafter; maintaining an ongoing quality control relationship with the IRAPs that the SRE recognizes, including periodic compliance reviews and consideration of retention, credential attainment, and program completion rates

for apprentices participating in the IRAP; developing policies and procedures for the suspension or derecognition of IRAPs that fail to comply with DOL or SRE requirements; and implementing policies and procedures for handling complaints filed against an IRAP.¹³

An SRE is required, for each IRAP that it recognizes, to annually report to the Administrator and to make publicly available the following information: current contact information; the total number of new and continuing apprentices; the annual completion rate for apprentices; the median time for apprentices to complete the IRAP; the employment retention rate for apprentices 6 months and 12 months after completion of the IRAP; and the industry-recognized credentials attained by apprentices and the number of each attained. In addition, the SRE must report the annualized average earnings of apprentices over the six-month period after completion of the IRAP, the training costs per apprentice, and the basic demographics of participating apprentices.¹⁴

IRAP Qualifications and Responsibilities

An IRAP is described in the DOL's final rule as "high-quality apprenticeship programs, wherein an individual obtains workplace-relevant knowledge and progressively advancing skills, that include a paid-work component and an educational or instructional component, and that result in an industry-recognized credential."¹⁵ An IRAP may be developed or delivered by a trade or industry group, a corporation, a nonprofit organization, an educational institution, a union, or a joint-labor management organization.¹⁶ An IRAP must be recognized by an SRE and must comply with all federal requirements and the requirements of the SRE by which it

is recognized. IRAPs are alternatives to RAPs and do not supplant RAPs.

An IRAP must train apprentices for employment in jobs that require specialized knowledge and experience and that involve complex tasks. An IRAP must have a written training plan, consistent with its SRE’s requirements, that details the apprenticeship program’s structured work experiences and related instruction. The IRAP must be designed to allow apprentices to demonstrate competency and to provide apprentices with progressively advancing industry-essential skills. An IRAP is required to provide apprentices with mentorships that are structured, ongoing, and include focused supervision and training with experienced mentors. An IRAP must also provide apprentices with industry-recognized credentials during the course of, or upon completion of, the IRAP. IRAPs must also comply with applicable safety laws and regulations, wage and hour laws and regulations, and equal employment opportunity requirements.¹⁷

For each apprentice participating in an IRAP, the IRAP must maintain a written apprenticeship agreement that outlines all terms and conditions of the apprentice’s employment and training. An IRAP is also required to disclose all program costs and expenses that will be charged to an apprentice prior to an individual starting the apprenticeship program.¹⁸

Comparison of RAPs and IRAPs

Highlights of several of the differences between RAPs and IRAPs are as follows:

RAP	IRAP
PAY	PAY
Wages increase on a schedule consistent with the skills acquired by an apprentice.	Wage increases are not required as an apprentice acquires skills.
CREDENTIALS	CREDENTIALS
A certificate of completion and a national industry-recognized credential is issued by the DOL to an apprentice that completes a RAP.	At least one industry-recognized credential must be issued to an apprentice during or upon completion of an IRAP.
ON-THE-JOB TRAINING	ON-THE-JOB TRAINING
A minimum of 2,000 hours of competency-based training, or a combination of on-the-job hours and verified demonstration of competencies, is required.	Structured work experiences must be competency-based and no minimum number of on-the-job hours is required.
INSTRUCTION	INSTRUCTION
An annual minimum of 144 hours of related training and instruction is recommended.	The amount of related instruction is determined by SREs and industry standards.
MENTORING	MENTORING
A one-to-one mentor-to-apprentice ratio is recommended.	No specific mentor-to-apprentice ratio is required.

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¹ 29 C.F.R. §29.4.

² Iowa Code ch. 15B.

³ Iowa Code ch. 15C.

⁴ Exec. Order No. 13801, 82 Fed. Reg. 28229 (June 15, 2017).

⁵ U.S. Dept. of Labor, Task Force on Apprenticeship Expansion, Final Report to the President of the United States (May 10, 2018), www.dol.gov/apprenticeship/docs/task-force-apprenticeship-expansion-report.pdf.

⁶ U.S. Dept. of Labor, Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations, 84 Fed. Reg. 29970 (proposed June 25, 2019) (to be codified at 29 C.F.R. pt. 29).

⁷ U.S. Dept. of Labor, Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations, Rulemaking Docket ETA-2019-0005, beta.regulations.gov/docket/ETA-2019-0005 (last visited Aug. 25, 2020).

⁸ U.S. Dept. of Labor, Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations, 85 Fed. Reg. 14294 (Mar. 11, 2020).

⁹ 29 C.F.R. §29.20(a).

¹⁰ 29 C.F.R. §29.21(a).

¹¹ 29 C.F.R. §29.21(b)(2).

¹² 29 C.F.R. §29.30.

¹³ 29 C.F.R. §29.22(a)(4).

¹⁴ 29 C.F.R. §29.22(h).

¹⁵ 29 C.F.R. §29.20(b).

¹⁶ 29 C.F.R. §29.20(b).

¹⁷ 29 C.F.R. §29.22(4)(i-viii).

¹⁸ 29 C.F.R. §29.22(4)(ix-x).