

**PART XVI**

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# CHAPTER APPRENTICESHIP TRAINING PROGRAMS

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Apprenticeship training is vital to the success of merit shop construction. An increasing number of ABC chapters have established employee training programs on behalf of member (and non-member) companies.

Federal laws governing chapter training programs are complicated and many compliance steps must constantly be monitored. Keep in mind, state laws may differ and should be consulted in connection with any chapter apprenticeship program. However, state apprenticeship councils that have been given deferral authority by the DOL are required to conform to federal standards or else risk deregistration.

## 1. FEDERAL REGULATIONS GOVERNING APPRENTICESHIP AND TRAINING

The DOL's Office of Apprenticeship has established the basic criteria for approval of apprenticeship and other training programs. OA approval is required in order to be certified as a bona fide apprenticeship or training program, unless there is a State Apprenticeship Agency fulfilling that role. OA also will step in if it finds an SAA has unreasonably withheld certification.

The OA certification requirements are set forth at 29 C.F.R. Part 29 and require the following steps by the program sponsor:

- There must be a written plan for the program subscribed to by the sponsor.
- The plan must provide for employment and training of each apprentice in a skilled trade.
- The plan must include at least 2,000 hours of work experience, or adopt a competency-based approach or an approved hybrid plan.
- The plan must outline the supervised work experience for its apprentices.
- The plan must provide for supplemental technical instruction of at least 144 hours per year.
- The plan must specify progressively increasing apprentice wage rates and a specific, approved ratio of apprentices to journeymen.
- The plan must provide for periodic review of the apprentice's progress and document the review.
- There must be a reasonable probationary period, terminable by either side at any time.
- There must be adequate and safe equipment and safety training.
- There must be minimum qualifications for entry, including an age minimum of 16.

- There must be a written apprentice agreement incorporating the program’s standards.
- Any advanced credit must be granted on equal terms.
- Training credit must be transferable within the program.
- There must be qualified training personnel and adequate on-the-job supervision.
- There must be a certificate for completing the program.
- The registering agency must be identified.
- The plan must provide for registering and deregistering the program itself, the apprentice agreements and any amendments.
- The plan must contain certain specific EEO requirements and must state that it will comply with applicable EEO laws.
- The plan must identify the person receiving and processing complaints.
- The plan must provide for proper recordkeeping of all required records concerning apprenticeship.

The EEO requirements of Part 30 were most recently revised in 2016 to expand protections from discrimination to include a broader range of workers, including qualified individuals with disabilities, age (40 or older), sexual orientation and genetic information. The rules also modified the affirmative steps employers and sponsors must take to ensure equal opportunity in apprenticeship, and established a new utilization goal of 7% for qualified apprentices with disabilities. The revised Part 30 EEO requirements are currently in effect for those states governed by the federal Office of Apprenticeship, while state apprenticeship agencies were given additional time to come into compliance with the new regulations.

## 2. EMPLOYEE RETIREMENT INCOME SECURITY ACT

Apprenticeship and training programs may also be subject to the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, et seq. ERISA establishes uniform federal regulation of all “employee welfare benefit plans.” Such plans have been defined to include any plan, fund or program established or maintained by an employer (or association of employers) to provide apprenticeship and other training programs for the benefit of employees.

On the other hand, the DOL has declared that certain payments for employers will **not** be considered “employee welfare benefit plans” and are therefore not subject to ERISA. See 29 C.F.R. § 2510.3-1. These exempt payments include:

- **Payroll practices:** defined to include “payment of compensation on account of periods during which an employee performs little or no work while engaged in training” or “payment to employees on leave to pursue education.”
- **Industry advancement programs:** defined to include programs maintained by an employer or association, which have no employee participants and provide no benefits to employees, but act only as a conduit for funds to a true employee benefit plan.

- **Unfunded scholarship programs:** defined to include a scholarship program, including a tuition and education expense refund program, under which payments are made solely from the general assets of an employer.

Because a true apprenticeship program provides on-the-job training for the benefit of employees, and not merely paid time off or tuition for classroom education, most ABC chapter programs would appear to be covered by ERISA. If you are uncertain whether ERISA applies to your chapter program, be sure to seek counsel.

The federal ERISA law contains a preemption provision that is supposed to protect covered employee benefit programs from state law interference. However, in the case of **California Division of Labor Standard Enforcement v. Dillingham Construction, N.A., Inc.**, the U.S. Supreme Court limited the scope of ERISA preemption and permitted state governments to enforce certain regulations relating to apprenticeship plans under state prevailing wage laws. Even under the **Dillingham** decision, however, states are still prohibited from mandating ERISA-covered apprenticeship benefits.

Apprenticeship plan sponsors whose plans are covered under ERISA should comply with the following requirements:

- Every ERISA covered plan must be in writing.
- The plan must be run by “fiduciaries” who owe a duty of care to the beneficiaries.
- All assets of the plan must be held in a trust, established by a written trust document and managed by trustees. (Trustees may be designated by the chapter board and may include board members to ensure continued cooperation with the chapter.)
- Employer contributions may be received in a variety of ways and need not be limited to ABC members. However, no plan assets may return to the contributing employers. (The assets must be held for the exclusive purpose of providing benefits to employee participants and defraying reasonable expenses of the plan.)
- Among other prohibited transactions, plan assets may not be transferred, sold or loaned to plan fiduciaries or any party in interest to the plan. (Reasonable administrative fees are permitted.)
- Bonding of plan fiduciaries may be required.
- Apprenticeship and training plans covered by ERISA must file reports with the U.S. government. Unlike most other types of ERISA plans, however, a special exemption permits apprenticeship plans to file a “short form” notice with DOL. The notice needs to list only the name of the plan; the name of the plan administrator; the name and location of an office or person from whom an interested individual can obtain a description of the course of study; and a description of the enrollment procedure.
- If the short form is filed, no detailed financial reports (Form 5500) or summary plan description need be filed with the government or distributed to employees.

A number of extra administrative requirements result from ERISA’s coverage. Failure to comply can result in significant penalties. ABC has available a number of model trust documents for use by chapter apprenticeship plan sponsors and strongly recommends consultation with legal counsel to ensure total compliance with applicable law.

### 3. CREDITING CONTRIBUTIONS TO ABC APPRENTICESHIP PROGRAMS UNDER THE DAVIS-BACON ACT

Under the federal Davis-Bacon Act, 40 U.S.C. § 276a, employers performing public works projects are required to pay their covered employees a predetermined prevailing wage. In order to meet this requirement, the law gives employers credit for contributions to bona fide fringe benefit programs, including apprenticeship programs. Thus, contractors can be encouraged to contribute to chapter training programs in order to comply with the Davis-Bacon Act and at the same time serve the important goal of improving employee training.

The rules for receiving Davis-Bacon credit for apprenticeship program contributions are complex, and the penalties for noncompliance are severe. Chapters and employers should be aware of the following guidelines:

- Contributions must be made to a bona fide apprenticeship or training program (i.e., a program registered with OA or SAA).
- Only the actual costs incurred for the training program may be credited to the contractor.
- Costs of the program may be credited toward the contractor's other prevailing wage obligations, but only to the extent of the actual costs for training that contractor's employees.
- Costs incurred for training one classification of worker may not be used to offset costs required for training another classification (i.e., a contractor cannot claim credit for the costs of an electrical apprentice program to satisfy a prevailing wage requirement for carpenters).
- Contractors may take credit for cents-per-hour contributions to an apprentice program or may make a lump-sum payment. In the latter case, the lump-sum payment is converted into an hourly cash equivalent by dividing the lump sum by the total number of hours worked by journeymen and apprentices in the trade being trained.
- If contributions for training are made only during Davis-Bacon work, and the contractor's employees work on private jobs during the period for which training benefits them, then the contractor must proportionately reduce ("annualize") the credit taken under the Davis-Bacon Act. This is done by dividing the amount contributed by the portion of the employee's total hours worked that year. For example, if a contractor has contributed \$2,000 on Davis-Bacon work only, and an employee has worked 1,500 Davis-Bacon hours and 500 non-Davis-Bacon hours, the contractor should only take \$1,500 of credit toward payment of the prevailing wage.
- Each contractor claiming Davis-Bacon credit for contributions must be prepared to document its costs per employee for the applicable training. The chapter training program should be prepared to assist the contractor in the cost accounting process.

Any ABC chapter that sponsors an apprenticeship program should audit its compliance with each of the aforementioned federal laws discussed. In addition, it may be necessary to comply with state laws relating to the training process. Despite complicated procedures, merit shop apprenticeship training can be operated successfully, and it is vital to the continued vitality of nonunion construction.