

Technical Amendment
November 10, 2022
EDUCATION AND LABOR CABINET
(Technical Amendment)

787 KAR 3:010. Registration of apprenticeship programs.

RELATES TO: KRS Chapter 343

STATUTORY AUTHORITY: KRS 151B.020(6), 343.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.020(6) requires the secretary of the Education and Labor Cabinet to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. Executive Order 2018-586 transitioned the apprenticeship program from the Labor Cabinet to the Education and Workforce Development Cabinet. This administrative regulation establishes standards required by 29 C.F.R. parts 29 and 30 to safeguard the welfare of apprentices, promote apprenticeship opportunities, and to extend the application of those standards by prescribing policies and procedures concerning the registration of acceptable apprenticeship programs with the Office of Employer and Apprenticeship Services. These standards cover the registration, programmatic review, cancellation, and deregistration of apprenticeship programs and of apprenticeship agreements.

Section 1. Definitions.

- (1) "Apprentice" is defined by KRS 343.010(1).
- (2) "Apprenticeship agreement" is defined by KRS 343.010(2).
- (3) "Apprenticeship program" is defined by KRS 343.010(7).
- (4) "Commissioner" means the Commissioner of the Department of Workforce Development.
- (5) "Council" means the Kentucky Apprenticeship Council.
- (6) "Employer" is defined by KRS 343.010(10).
- (7) "Joint apprenticeship committee" means 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.
- (8) "Journeyworker" means a worker who has attained a level of skill, abilities, and competencies recognized within an industry as necessary to master the skills and competencies required for the occupation. It also refers to a mentor, technician, specialist, or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.
- (9) "Nonjoint apprenticeship program sponsor" means an apprenticeship program sponsor in which a bona fide collective bargaining agent does not participate, such as:
 - (a) An individual nonjoint sponsor, which is an apprenticeship program sponsored by one (1) employer without the participation of a union; and
 - (b) A group nonjoint sponsor, which is an apprenticeship program sponsored by two (2) or more employers without the participation of a union.
- (10) "Office of Apprenticeship" means the Office of Apprenticeship within the United States Department of Labor.
- (11) "Provisional registration" means the one (1) year initial provisional approval of newly registered programs that meet the required standards for program registration, after

which program approval shall be:

- (a) Made permanent;
 - (b) Continued as provisional; or
 - (c) Rescinded following a review by the registration agency.
- (12) "Registration agency" means the Education and Labor Cabinet, Department of Workforce Development, and its office or division charged with determining whether a program may be registered with the Kentucky Apprenticeships Program.
- (13) "Registration of an apprenticeship program" means the acceptance and recording of the program, which confirms that the program meets the basic standards and requirements for approval as indicated by written evidence.
- (14) "Related instruction" is defined by KRS 343.010(11).
- (15) "Sponsor" is defined by KRS 343.010(9).
- (16) "State apprenticeship agency" means the Education and Labor Cabinet, Department of Workforce Development and its office or division charged with the responsibility and accountability for apprenticeship within the Commonwealth of Kentucky.
- (17) "Supervisor" is defined by KRS 343.010(5).
- (18) "Technical assistance" means guidance provided by registration agency staff in the development, revision, amendment, or processing of a potential or current program sponsor's standards of apprenticeship or apprenticeship agreements, or advice or consultation with a program sponsor to further compliance with this administrative regulation or guidance from the Office of Apprenticeship to a state apprenticeship agency on how to remedy nonconformity with this administrative regulation.
- (19) "Transfer" means a shift of apprenticeship registration from one (1) program to another or from one (1) employer within a program to another employer within that same program, if there is agreement between the apprentice and the affected joint apprenticeship committees or nonjoint apprenticeship program sponsors.

Section 2.

- (1) Only an apprenticeship program or agreement that meets the criteria established in this subsection shall be eligible for state apprenticeship agency registration.
- (a) The program or agreement is in conformity with the requirements of this administrative regulation and the training is in an apprenticeable occupation having the characteristics set forth in 29 C.F.R. 29.4.
 - (b) The program or agreement is in conformity with the regulations on "Equal Employment Opportunity in Apprenticeship and Training" set forth in 29 C.F.R. Part 30, as amended, and Kentucky law on "Equal Employment Opportunity in Apprenticeship and Training" set forth in KRS Chapter 344.
 - (c) Except as provided under paragraph (d) of this subsection, apprentices shall be individually registered under a registered program. Individual registration may be accomplished:
 1. By filing copies of each individual apprenticeship agreement with the registration agency; or
 2. By filing a master copy of the agreement followed by a listing of the name, pursuant to KRS 343.050, of each individual when apprenticed.
 - (d) The names of probationary employees serving as apprentices under an apprenticeship program registered by the state apprenticeship agency, if not individually registered under the program, shall be submitted within forty-five (45) days of employment to the state apprenticeship agency for certification to establish the apprentice as eligible for probationary employment.
 - (e) The registration agency shall be notified within forty-five (45) days of persons who have successfully completed apprenticeship programs; and of transfers, suspensions,

and cancellations of apprenticeship agreements and a statement of the reasons therefore.

(f) Applications for new programs that the registration agency determines meet the required standards for program registration shall be given provisional registration for a period of one (1) year. The registration agency shall review all new programs for quality and for conformity with the requirements of this administrative regulation at the end of the first year after registration. At that time:

1. A program that conforms to the requirements of this administrative regulation shall:

a. Be made permanent; or

b. Continue to be provisionally registered through the first full training cycle.

2. A program not in operation or in conformance with the administrative regulations during the provisional registration shall be recommended for deregistration procedures.

(2) Approved apprenticeship programs shall be accorded registration, evidenced by a certificate of registration or other written indicia.

(3) Any modification or change to a registered program shall be promptly submitted to the registration office and, if approved, shall be recorded and acknowledged as an amendment to the program.

(4) The request for registration of an apprenticeship program, together with all documents and data required by this administrative regulation, shall be submitted in writing or electronic transmission to the supervisor of apprenticeship.

(5)

(a) If a program is proposed for registration by an employer or employers' association, written acknowledgement of union agreement or "no objection" to the registration shall be required if the standards, collective bargaining agreement, or other instrument provides for participation by a union in any manner in the operation of substantive matters of the apprenticeship program.

(b) If union participation is not evidenced and practiced, the employer or employers' association shall simultaneously furnish a copy of the apprenticeship program and its application for registration to the union collective bargaining agent, if any, of the employees to be trained.

(c) The supervisor shall provide a reasonable time period of not less than forty-five (45) days for receipt of any union comments before final action on the approval.

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

Section 3. The standards established in this section shall apply to an apprenticeship program.

(1) The program shall be an organized, written plan embodying the terms and conditions of qualification, recruitment, selection, employment, training, and supervision of one (1) or more apprentices in an apprenticeable occupation and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The standards shall contain the equal opportunity pledge prescribed in the Kentucky State Plan for equal employment opportunity in apprenticeship and, if applicable, an affirmative action plan and a selection method in accordance with the Kentucky State Plan for equal employment opportunity in apprenticeship, and provisions concerning the following:

(a) The employment and training of the apprentice in a skilled occupation;

(b) A term of apprenticeship, which for an individual apprentice shall be measured either through the completion of the industry standard for on-the-job learning (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based

approach), or a blend of the time-based and competency-based approaches (hybrid approach).

1. The time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule.

2. The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, throughout the apprenticeship program and as verified by the program sponsor. Programs utilizing this approach shall still require apprentices to complete a paid on-the-job learning component of registered apprenticeship. The program standards shall address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for the competencies.

3. The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

4. The determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the registration agency of the determination as appropriate to the apprenticeable occupation for which the program standards are registered;

(c) An outline of the 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;

(d) Provision for organized related and supplemental instruction in technical subjects related to the occupation. A minimum of 144 hours for each year of apprenticeship shall be required. This instruction in technical subjects may be accomplished through teaching modalities such as classroom, occupational, or industry courses, electronic media, or other instruction approved by the registration agency, or a combination thereof. Every apprenticeship instructor shall:

1. Meet the state Department of Education's requirements for a vocational-technical instructor in the state of registration, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within a business or industry as having expertise in a specific occupation; and

2. Demonstrate mastery in teaching techniques and adult learning styles prior to providing the related technical instruction;

(e) A progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired and whether the required school time shall be compensated. The entry wage shall not be less than forty (40) percent of the established journeyworker rate or not less than the minimum wage prescribed by federal or state law, whichever is greater. On projects where the wage rate has been established by law, the apprentice's rate of pay shall be based upon the established journeyworker rate;

(f) Periodic review and evaluation of the apprentice's progress in job performance and related instruction and maintenance of appropriate progress records;

(g) Except as otherwise provided herein, the ratio of apprentices to journeyworkers shall be 1:1. For each apprentice who completes 2,000 hours of on-the-job training, a second apprentice may be added. The ratio shall not exceed two (2) apprentices for each journeyworker unless a modification to the ratio is approved as set forth herein. An apprentice sponsor or an employer may request in writing to modify the ratio in a medium or low risk occupation, as those terms are defined by the United States Occupational Safety Health Administration. The Commissioner will review the request, and respond within ninety (90) days of receipt of the request. In evaluating any

such request, the Commissioner may modify a ratio upon a determination that the new ratio:

1. Will not endanger the safety of apprentices or the journeyworker; and
 2. Will not materially impair the quality of training. The decision to authorize the modification of the ratio in medium and low risk occupations rests solely within the discretion of the Commissioner. There is no right to appeal any denial of a request to modify the ratio. Nothing in this administrative regulation shall be construed as prohibiting a sponsor or employer from establishing a ratio that permits or requires more than one (1) journeyworker for each apprentice or as invalidating a collective bargaining agreement that permits or requires more than one (1) journeyworker for each apprentice;
- (h) A probationary period of reasonable duration in relation to the full apprenticeship term, during which the apprenticeship agreement may be terminated by either party, with full credit for this period toward completion of apprenticeship. The probationary period shall not exceed twenty-five (25) percent of the term of the apprenticeship or one (1) year, whichever is shorter;
- (i) Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;
- (j) Grant of advance standing or credit, up to fifty (50) percent, for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step;
- (k) The transfer of an apprentice between apprenticeship programs and within an apprenticeship program shall be based on agreement between the apprentice and the affected joint apprenticeship committees or nonjoint apprenticeship program sponsors, and shall comply with the following requirements:
1. The transferring apprentice shall be provided a transcript of related instruction and on-the-job learning by the joint apprenticeship committee or nonjoint apprenticeship program sponsor;
 2. Transfer shall be to the same occupation; and
 3. A new apprenticeship agreement shall be executed when the transfer occurs between program sponsors;
- (l) Assurance of qualified training personnel and adequate supervision on the job;
- (m) The placement of an apprentice under an apprenticeship agreement as required by KRS Chapter 343 and 803 Chapter 1. The agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;
- (n) The required minimum qualifications for persons entering an apprenticeship program, with an eligible starting age to be not less than sixteen (16) years;
- (o) Recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the registration agency;
- (p) Apprenticeship programs that utilize the competency-based or hybrid approach for progression through an apprenticeship and for which program sponsors choose to issue interim credentials shall clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupation, and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential. Further, interim credentials shall only be issued by program sponsors for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation;
- (q) Identification of the registration agency;
- (r) Name and address of the appropriate authority under the program to receive, process, and make disposition of complaints;

- (s) Recording and maintenance of all records concerning apprenticeship as may be required by the state apprenticeship agency or other applicable law; and
- (t) Provision that all controversies or differences shall be resolved in accordance with KRS 343.050(8).

Section 4. Program Performance Standards.

- (1) Every registered apprenticeship program shall have at least one (1) registered apprentice, except for the following specified periods of time, which shall not exceed one (1) year:
 - (a) Between the date when a program is registered and the date of registration for its first apprentice; or
 - (b) Between the date that a program graduates an apprentice and the date of registration for the next apprentice in the program.
- (2) Registration agencies shall evaluate performance of registered apprenticeship programs.
 - (a) The tools and factors to be used shall include quality assurance assessments, equal employment opportunity (EEO) compliance reviews, and completion rates.
 - (b) Any additional tools and factors used by the registration agency in evaluating program performance shall adhere to the goals and policies articulated in this administrative regulation.
- (3) In order to evaluate completion rates, the registration agency shall review a program's completion rates in comparison to the national average for completion rates. Based on the review, the registration agency shall provide technical assistance to programs with completion rates lower than the national average.
- (4) Cancellation of apprenticeship agreements during the probationary period shall not have an adverse impact on a sponsor's completion rate.

Section 5. The apprenticeship agreement shall contain explicitly:

- (1) The information required by KRS 343.050;
- (2) The signatures required by KRS 343.060;
- (3) Name and address of the program sponsor and registration agency;
- (4) A reference incorporation as part of the agreement 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; and
- (5) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, national origin, sex, or age.

Section 6. Deregistration of a program may be initiated upon the voluntary action of the sponsor by request for cancellation of the registration, or upon a finding of good and sufficient reason by the supervisor instituting formal deregistration proceedings in accordance with the provisions of this section.

- (1) Request by sponsor. The supervisor may cancel the registration of an apprenticeship program for good and sufficient reason by written acknowledgment of the request stating, but not limited to, the following matters:
 - (a) The registration is cancelled at sponsor's request, the reason for the cancellation, and effective date; and
 - (b) That, within fifteen (15) days of the date of the acknowledgment, the sponsor shall notify all apprentices:
 - 1. Of the cancellation, the reason for the cancellation, and the effective date;
 - 2. That the cancellation automatically deprives the apprentice of individual registration;

3. That the deregistration of the program removes the apprentice from coverage for state and federal purposes; and

4. That all apprentices are referred to the registration agency for information about potential transfer to other registered apprenticeship programs.

(2) Deregistration by the registration agency upon reasonable cause. Formal deregistration. Deregistration proceedings may be undertaken if the apprenticeship program is not conducted, operated, and administered in accordance with the registered provisions or the requirements of this administrative regulation, except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions in the Kentucky State Plan for equal employment opportunity in apprenticeship.

(a) If it appears the program is not being operated in accordance with the registered standards or this administrative regulation, the supervisor shall so notify the program sponsor in writing. The notice shall be sent by certified mail, with return receipt requested. The notice shall state the violations and the remedy required, and that a determination of reasonable cause for deregistration will be made unless corrective action is effected within fifteen (15) days. Upon request by the sponsor for good cause, the fifteen (15) day term may be extended by the supervisor. During the period for correction, the sponsor shall be assisted in every reasonable way to achieve conformity. If the required correction is not effected within the allotted time, the supervisor shall send a notice to the sponsor, by certified mail, return receipt requested, stating the following:

1. The notice is sent pursuant to this section;

2. Certain deficiencies (stating them) were called to sponsor's attention and remedial measures requested, with dates of the occasions and letters; and that the sponsor has failed or refused to effect correction; and

3. Based upon the stated deficiencies and failure of remedy, a determination of reasonable cause has been made and the program may be deregistered unless, within fifteen (15) days of the receipt of this notice, the sponsor requests a hearing.

(b) If a request for a hearing is not made, the supervisor shall issue a determination with respect to deregistration of the program.

(c) If the sponsor has not requested a hearing, the supervisor shall file his determination with the commissioner. This determination shall contain all pertinent facts and circumstances concerning the nonconformity, including the findings and copies of all relevant documents and records.

(d) The supervisor's determination shall become final in accordance with KRS 343.070.

(e) If the sponsor requests a hearing, the commissioner shall convene a hearing after due notice to the parties and shall make a final decision on the basis of the record before him.

(f) Any party to the dispute aggrieved by the order or decision of the commissioner may appeal in accordance with KRS 343.070.

Section 7. The commissioner shall accord reciprocal approval for federal purposes to apprentices, apprenticeship programs, and standards that are registered in other states by the Office of Apprenticeship or a registration agency if reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval shall meet the wage and hour provisions and apprentice ratio standards of the reciprocal state.

(LAB 1; 1 Ky.R. 47; eff. 10-2-1974; 4 Ky.R. 65; 177; eff. 11-2-1977; TAM eff. 8-9-2007; 35 Ky.R. 1909; 2432; eff. 6-5-2009; 41 Ky.R. 1150; 1526; eff. 2-6-2015; Recodified from 803 KAR 1:010, 6-14-2019; 46 Ky.R. 258; 973; 1122; eff. 10-3-2019; Cert eff. 2-4-2020; TAM eff. 11-10-2022.)

FILED WITH LRC: November 10, 2022