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STATE OF WISCONSIN
DWD
Department of Workforce Development

Tony Evers, Governor
Caleb Frostman, Secretary

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On January 22, 2019 the Department of Workforce Development submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule amends ch. DWD 295 relating apprenticeship and repeals and recreates ch. DWD 296 relating to federal equal employment opportunity standards for apprenticeship programs.

Statement of Scope

The scope statement for this rule, SS 118-17 was approved by the Governor on October 26, 2017 and published in Register No. 742B, on October 30, 2017, and approved by the Secretary on November 13, 2017.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 20, 2019.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Division of Employment and Training

Agency Contact Person

Karen Schultz, Administrative Rules Coordinator, (608) 261-6805

Dated this 22nd day of January, 2019.

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT

J. L. W.

J. L. Wakerhauser, Deputy Legal Counsel

Clearinghouse No. _____

Proposed Hearing Draft
January 22, 2019

PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT CREATING AND ADOPTING RULES

1 The Wisconsin department of workforce development proposes the following order ***to***

2 ***amend*** DWD 295 and ***repeal and recreate*** ch. DWD 296 relating to federal equal employment

3 opportunity standards for apprenticeship programs.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted

Statutes interpreted: ch. 106, Stats.

Statutory Authority

Section 106.01 (11) (a) and (b), Stats.

Explanation of Statutory Authority

An apprenticeship program is a program approved by the department providing for the employment and training of apprentices in a trade, craft, or business that includes a plan containing all of the terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices. The department is authorized to promulgate rules related to provisions to be included in an apprenticeship contract and procedures for approving and for rescinding approval of apprenticeship programs.

Related Statute or Rules

Wis. Stats. Ch. 106 – Apprenticeship, Employment and Equal Rights Programs

Plain Language Analysis

Chapter DWD 296 (Federal Equal Opportunity Standards for Apprenticeship Programs) is promulgated pursuant to ch. 106, Stats. and prescribes the policies and procedures to promote equality of opportunity in apprenticeship programs registered with the department. This emergency rule repeals and recreates ch. DWD 296 to align with federal regulations (29 CFR 29 and 29 CFR 30) and state statute. Wisconsin is recognized as a state apprenticeship agency organized under 29 CFR 29.13 and is required by federal regulation to incorporate the changes made under 29 CFR 29 and 29 CFR 30.

The U.S. Department of Labor, Office of Apprenticeship, updated 29 CFR 29 and 29 CFR 30 to include regulations that prohibit discrimination in registered apprenticeship programs because of age (40 or older), genetic information, sexual orientation, and disability. These categories are in addition to the existing regulations that prohibit discrimination in registered apprenticeship programs because of race, color, religion, national origin, and sex. Federal regulations also require sponsors to provide equal opportunity in apprenticeship. State agencies with recognized apprenticeship programs are required to update administration rules to reflect federal regulations.

The rule differs from the current rule by:

- Creating the definitions "ADA," "affirmative action plan," "apprentice," "EEO," "ethnic group" or "ethnicity," "genetic information," "individual with a disability," journeyworker," "major life activities," "physical or mental impairment," "pre-apprenticeship program," "qualified applicant or apprentice," "reasonable accommodation," "registered," "UGESP," and "Wisconsin equal rights division."
- Amending the definition "affirmative action program" to align with federal regulations.
- Repealing the definitions "agency," "commission," "secretary of labor," "minority count," and "female count" because those terms are no longer used in ch. DWD 296.
- Amending the definitions "department," and "employer" to reflect proper citation.

The rule also does all the following:

- Requires sponsors to invite applicants to self-identify as an individual with a disability at various times in the application and hiring process and requires sponsors to make a one-time invitation to apprentices currently in registered apprenticeship programs.
- Improves and clarifies the affirmative steps employers and sponsors shall take to ensure equal opportunity in their registered apprenticeship program.
- Requires sponsors to analyze their workforce and take affirmative actions to employ individuals with a disability.
- Establishes a utilization goal of 7% for individuals with a disability within a sponsor's registered apprenticeship programs.
- Requires sponsors to conduct a workforce analysis by occupation and availability analysis by major occupation group.
- Clarifies certain minimum outreach and recruitment efforts that are required for all sponsors, and additional efforts that sponsors with affirmative action programs will take if they find themselves to be underutilizing members of a protected class.
- Requires a sponsor to assign an individual to oversee the sponsor's equal employment opportunity efforts.
- Allows sponsors to use any method of selecting apprentices that complies with the UGESP, rather than using one of four specified methods under the current rule.
- Requires sponsors to conduct periodic orientation and information sessions for those connected with the registered apprenticeship programs, including anti-harassment training.

- Allows the department to sanction noncompliant sponsors by suspending their right to register new apprentices while they implement corrective affirmative action plans. Under current law, the department is authorized only to deregister noncompliant sponsors.
- Specifies exactly what sponsors are required to do for outreach recruitment.
- Provides more flexibility for sponsors to use any selection method for apprentices, as long as it is not discriminatory. Current rule requires the sponsor to use one of four selection methods.
- Streamlines and simplifies sponsor's obligations while maintaining broad and effective equal employment opportunity protections for applicants or apprentices in a registered apprenticeship program.

In addition, the rule provides sponsors 180 days to create a revised EEO plan and one year to bring their registered apprenticeship program into compliance with the new requirements and the department will provide technical assistance as needed.

Updates to ch. DWD 295 are only technical in nature and update cross references to the new sections in ch. DWD 296.

Summary of, and comparison with, existing or proposed federal regulations

The rule reflects changes under federal regulations 29 CFR 29 (Labor Standards for the Registration of Apprenticeship) and 29 CFR 30 (Equal Employment Opportunity in Apprenticeship). Prior to an update in January 2017, the federal regulations were last revised in 1978, prohibiting discrimination based on race, sex, color, religion and national origin and requiring sponsors with more than five apprentices to develop and implement a written affirmative action plan for minorities and the inclusion of female apprentices. Currently, these regulations are intended to provide for more uniform training of apprentices and promote equal opportunity in apprenticeship.

Comparison with rules in adjacent states

Minnesota operates a recognized state apprenticeship agency organized under 29 CFR 29.13 (Minn. Stat. Ch. 178). Illinois, Iowa and Michigan have not established state apprenticeship agencies and registered apprenticeship in those states operates under federal law only.

Summary of factual data and analytical methodologies

The department is recognized by the U.S. Department of Labor as a state apprenticeship agency under 29 CFR 29.13. Department staff reviewed state statute and implemented the requirements under 29 CFR 29 and 29 CFR 30 to maintain this recognition.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

The rule will have no significant economic impact on small businesses as defined in s. 227.114 (1), Stats.

Anticipated costs incurred by private sector

Not Applicable.

Effect on small business

The rule will have no significant economic effect on small businesses as defined in s. 227.114 (1), Stats.

Agency contact person

Questions and comments related to this rule may be directed to:

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Telephone: (608) 266-3133
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Place where comments are to be submitted and deadline for submission

Karen Morgan, Apprenticeship Bureau Director
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Division of Employment Training
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Hearing comments will be accepted until the close of the public hearing on February 20, 2019.

SECTION 1. DWD 295.02 (2) (b) 23. is amended to read:

DWD 295.02 (2) (b) 23. Compliance with 29 CFR 30, including the equal opportunity pledge prescribed in 29 CFR 30.3 (b); an affirmative action plan complying with s. DWD ~~296.04~~ 296.05; and a method for the selection of apprentices authorized by s. DWD ~~296.05~~ 296.20, or compliance with parallel requirement contained in a state plan for equal opportunity in apprenticeship adopted under ch. DWD 296 and approved by the department. The apprenticeship standards shall also include a statement that the program shall be conducted, operated and administered in conformity with applicable provisions of ch. DWD 296, as amended, or, if applicable, an approved state plan for equal opportunity in apprenticeship.

SECTION 2. DWD 296 is repealed and recreated to read:

Chapter DWD 296

Federal Equal Employment Opportunity Standards for Apprenticeship Programs

DWD 296.01 Applicability. This chapter applies to all sponsors of registered apprenticeship programs under ch. 106, Stats.

DWD 296.02 Definitions. In this chapter:

(1) "ADA" means the Americans with Disabilities Act, as amended.

(2) "Affirmative action plan" means a written tool designed to assist a sponsor in detecting, diagnosing, and correcting any barriers to equal opportunity that may exist in the sponsor's registered apprenticeship program.

(3) "Affirmative action program" has the meaning given in 29 CFR 30.4 (a).

Note: 29 CFR 30.4 (a) reads: (a) (1) An affirmative action program is designed to ensure equal opportunity and prevent discrimination in apprenticeship programs. An affirmative action program is more than mere passive nondiscrimination. Such a program requires the sponsor to take affirmative steps to encourage and promote equal opportunity, to create an environment free from discrimination, and to address any barriers to equal opportunity in apprenticeship. An affirmative action program is more than a paperwork

exercise. It includes those policies, practices, and procedures, including self-analyses, that the sponsor implements to ensure that all qualified applicants and apprentices are receiving an equal opportunity for recruitment, selection, advancement, retention and every other term and privilege associated with apprenticeship. An affirmative action program should be a part of the way the sponsor regularly conducts its apprenticeship program.

(2) A central premise underlying affirmative action is that, absent discrimination, over time a sponsor's apprenticeship program, generally, will reflect the sex, race, ethnicity, and disability profile of the labor pools from which the sponsor recruits and selects. Consistent with this premise, affirmative action programs contain a diagnostic component which includes quantitative analyses designed to evaluate the composition of the sponsor's apprenticeship program and compare it to the composition of the relevant labor pools. If women, individuals with disabilities, or individuals from a particular minority groups, for example, are not being admitted into apprenticeship at a rate to be expected given their availability in the relevant labor pool, the sponsor's affirmative action program must include specific, practical steps designed to address any barriers to equal opportunity that may be contributing to this underutilization.

(3) Effective affirmative action programs include auditing and reporting systems as a means of measuring the sponsor's progress toward achieving an apprenticeship program that would be expected absent discrimination.

(4) An affirmative action program also ensures equal opportunity in apprenticeship by incorporating the sponsor's commitment to equality in every aspect of the apprenticeship program. Therefore, as part of its affirmative action program, a sponsor must monitor and examine its employment practices, policies and decisions and evaluate the impact such practices, policies and decisions have on the recruitment, selection and advancement of apprentices. It must evaluate the impact of its employment and personnel policies on minorities, women, and persons with disabilities, and revise such policies accordingly where such policies or practices are found to create a barrier to equal opportunity.

(5) The commitments contained in an affirmative action program are not intended and must not be used to discriminate against any qualified applicant or apprentice on the basis of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability.

(4) "Apprentice" has the meaning prescribed under s. 106.001(1), Stats

(5) "Department" means the department of workforce development.

(6) "EEO" means equal employment opportunity.

(7) "Employer" has the meaning prescribed under s. 106.001 (5), Stats.

(8) "Apprenticeship program" has the meaning prescribed under s. 106.001 (4), Stats.

1 **(9)** "Deregistration" means the voluntary or involuntary cancellation of an apprenticeship
2 program by the department.
3 **(10)** "Ethnic group" or "Ethnicity" means any of the following:
4 (a) Hispanic or Latino-An individual of Cuban, Mexican, Puerto Rican, South or Central
5 American, or other Spanish culture or origin, regardless of race.
6 (b) Not Hispanic or Latino.
7 **(11)** "Genetic information" means any of the following:
8 (a) An individual's genetic tests.
9 (b) The genetic tests of an individual's family members.
10 (c) The manifestation of disease or disorder in family members of an individual.
11 (d) An individual's request for, or receipt of, genetic services, or the participation in clinical
12 research that includes genetic services, or the participation in clinical research that includes genetic
13 services by an individual or a family member of an individual.
14 (e) The genetic information of a fetus carried by an individual or by a pregnant woman
15 who is a family member of the individual or family member using an assisted reproductive
16 technology.
17 (f) Genetic information does not include information about the sex or age of an individual,
18 the sex or age of family members or information about the race or ethnicity of an individual or
19 family members, or information about the race or ethnicity of an individual or family members
20 that is not derived from a genetic test.
21 **(12)** "Individual with a disability" means any of the following:
22 (a) An individual who has a physical or mental impairment that substantially limits one or
23 more major life activities or limits the capacity to work.

1 (b) An individual who has a record of such impairment.

2 (c) An individual who is perceived as having such an impairment.

3 **(13)** "Journeyworker" means an individual who has attained a level of skill, abilities and
4 competencies recognized within an industry as having mastered the skills and competencies
5 required for the occupation.

6 **(14)** "Major life activities" includes caring for oneself, performing manual tasks, seeing,
7 hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing,
8 learning, reading, reading, concentrating, thinking, communication, interacting with others, and
9 working. A major life activity also includes the operation of a major bodily function, including
10 functions of the immune system, special sense organs and skin; normal cell growth, and digestive,
11 genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular,
12 endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a
13 major bodily function, includes the operation of an individual organ within a body system.

14 **(15)** "Physical or mental impairment" means any of the following:

15 (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss
16 affecting one or more body systems, such as neurological, musculoskeletal, special sense organs,
17 respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary,
18 immune, circulatory, hemic, lymphatic, skin, and endocrine.

19 (b) Any mental or psychological disorder, such as intellectual disability, organic brain
20 syndrome, emotional or mental illness, and specific learning disabilities.

21 **(16)** "Pre-apprenticeship program" means a training model designed to assist individuals
22 who do not possess the minimum selection criteria established in a program sponsor's
23 apprenticeship standards required under this chapter and maintains at least one documented

partnership with an apprenticeship program. It involves a form of structured workplace education and training in which an employer, employer group, industry association, labor union, community-based organization, or educational institution collaborates to provide formal instruction that will introduce participants to the competencies, skills, and materials used in one or more apprenticeable occupations.

(17) "Qualified applicant or apprentice" means an individual who, with or without reasonable accommodation, can perform the duties of the apprenticeship program for which the individual applied or is enrolled.

(18) "Reasonable accommodation" means any of the following:

(a) Modifications or adjustments to a job application process that enable a qualified applicant or apprentice with a disability to be considered for the position a qualified applicant or apprentice desires.

(b) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified applicant or apprentice with a disability to perform the duties of that position.

(c) Modifications or adjustments that enable a sponsor's apprentice with a disability to enjoy equal benefits and privileges of apprenticeship as are enjoyed by its other similarly situated apprentices without disabilities.

Note: Examples of reasonable accommodations include:

1. Making existing facilities used by apprentices readily accessible to and usable by individuals with disabilities.

2. Job restructuring; part-time or modified work schedule; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

3. To determine the appropriate reasonable accommodation, it may be necessary for the sponsor to initiate an informal, interactive process with the qualified individual in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

(19) "Registered" or "Registration" means the approval of an apprenticeship program by the department.

(20) "Respondent" means the individual or entity identified in a complaint in which discrimination is alleged.

(21) "Sponsor" has the meaning prescribed under s. 106.01 (8) Stats.

(22) "UGESP" means the Uniform Guidelines Employee Selection Procedures under 41 CFR 60.3.

(23) "Wisconsin equal rights division" means the division of equal rights within the department.

DWD 296.04 Equal opportunity standards applicable to all sponsors. (1) DISCRIMINATION PROHIBITED. A sponsor of a registered apprenticeship program shall not discriminate against an apprentice or applicant for apprenticeship because of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability as it relates to any of the following:

(a) Recruitment, outreach, and selection process.

(b) Hiring, placement, upgrading, periodic advancement, promotion, demotion, transfer, layoff, termination, right or return from layoff, and rehiring.

(c) Rotation among work processes.

(d) Imposition of penalties or other disciplinary action.

(e) Rates of pay or any other form of compensation or changes in compensation.

1 (f) Conditions of work.

2 (g) Hours or work and hours of training provided.

3 (h) Job assignments.

4 (i) Leaves of absence, sick leave, or any other leave.

5 (j) Any other benefit, term, condition, or privilege associated with apprenticeship.

6 **(2)** GENERAL DUTY TO ENGAGE IN AFFIRMATIVE ACTION. A sponsor of a registered
7 apprenticeship program shall take affirmative steps to provide equal opportunity in apprenticeship
8 that shall include all of the following:

9 (a) *Assignment of responsibility.* A sponsor shall designate an individual with appropriate
10 authority in the registered apprenticeship program, to act as an apprenticeship coordinator that is
11 responsible for and accountable for overseeing the registered apprenticeship program's
12 commitment to equal opportunity, including the development and implementation of an
13 affirmative action program under s. DWD 296.05. A sponsor shall provide resources, support and
14 access to leadership to ensure effective implementation. The individual designated under this
15 section shall be responsible for all of the following:

16 1. Monitoring all registered apprenticeship activity to ensure compliance with the
17 nondiscrimination and affirmative action obligation required in this section.

18 2. Maintaining records required in this section.

19 3. Generating and submitting reports as required by the department.

20 (b) *Internal dissemination of equal opportunity policy.* A sponsor shall inform all
21 applicants for apprenticeship, apprentices, and individuals connected with the administration or
22 operation of the registered apprenticeship program, of its commitment to equal opportunity and
23 affirmative action obligations. A sponsor shall do all of the following:

1. Publish the equal opportunity pledge required in sub. (3) in its standards of apprenticeship required in s. DWD 295.02 and in apprentice and employee handbooks, policy manuals, newsletters, or other documents circulated by the sponsor or describe the nature of the sponsorship.

2. Post the equal opportunity pledge required in sub. (3) on bulletin boards, including through electronic media, or any other location accessible to all apprentices and applicants for apprenticeship.

3. Conduct orientation and periodic information sessions for individuals connected with the administration or operation of the registered apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices, to inform and remind individuals of the sponsor's equal employment opportunity policy in the apprenticeship program and provide anti-harassment training required in par. (d) 1.

4. Maintain records necessary to demonstrate compliance with the requirements under this section and provide a copy of these records as requested by the department.

(c) *Universal outreach and recruitment.* A sponsor shall implement all of the following measures to ensure the outreach and recruitments efforts for apprentices extend to all individuals available for apprenticeship within the sponsor's relevant recruitment area without regard to race, sex, ethnicity, or disability:

1. Develop and update on an annual basis, a list of current recruitment sources that will generate referrals from all demographic groups within the relevant recruitment area.

Note: Examples of relevant recruitment sources include: local workforce investment boards and job centers, community-based organizations, community colleges, vocational, career and technical schools, pre-apprenticeship programs, and federally-funded, youth job-training programs.

2. Provide the name, mailing address, telephone number, and email address for each recruitment source.

3. Provide recruitment sources advance notice, preferably 30 days, of apprenticeship openings to allow recruitment sources the opportunity to notify and refer candidates. This notice shall include documentation of the sponsor's equal opportunity pledge prescribed under sub. (3).

(d) *Maintaining apprenticeship programs free from harassment, intimidation and retaliation.* A sponsor shall develop and implement procedures to ensure apprentices are not harassed because of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability and ensure the registered apprenticeship program is free from intimidation and retaliation as prescribed in s. DWD 296.34. A sponsor shall promote an environment in which all apprentices feel safe, welcomed, and treated fairly and ensure all of the following steps are taken:

1. Provide anti-harassment training to all individuals connected with the administration or operation of the registered apprenticeship program, including all apprentices and journeyworkers who regularly work with apprentices. Training shall include participation by trainees and may include attending a training session in person or completing an interactive training online. The training content shall include all of the following:

a. That harassing conduct will not be tolerated.

b. The definition of harassment and the type of conduct that constitute unlawful harassment because of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information and disability.

c. The right to file a harassment complaint as prescribed under s. DWD 296.28.

2. Ensure all facilities and apprenticeship activities are available without regard to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability except that if a sponsor provides restrooms or changing facilities, a sponsor shall provide separate or single user restrooms and changing facilities to assure privacy between sexes.

3. Establish and implement procedures to handle and resolve complaints about harassment and intimidation because of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability, and complaints about retaliation for engaging in protected activity under s. DWD 296.34.

(e) *Compliance with federal and state equal employment opportunity laws.* A sponsor shall comply with all applicable federal and state laws and regulations that require equal employment opportunity without regard to race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability. Failure to comply with this chapter, if related to the equal employment opportunity of apprentices, or graduates of an apprenticeship program may result in deregistration or other enforcement actions prescribed under s. DWD 296.28.

(3) EQUAL OPPORTUNITY PLEDGE. A sponsor of a registered apprenticeship program shall include in its standards of apprenticeship and any apprenticeship opportunity announcements, the following equal opportunity pledge:

"*[Enter name of sponsor]* will not discriminate against apprenticeship applicants or apprentices because of race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, genetic information, or because they are an individual with a disability or a person 40 years old or older. *[Enter name of sponsor]* shall take affirmative action to provide equal opportunity in apprenticeship and operate the apprenticeship program as required under 29 CFR part 30, and the equal employment opportunity rules of the state of Wisconsin."

1 **(4)** COMPLIANCE. (a) A sponsor of a registered apprenticeship program shall comply with
2 the obligations of this subsection within 180 days of January 18, 2019.
3 (b) A sponsor registering an apprenticeship program after January 18, 2019 shall comply
4 with the obligations under this subsection upon registration or 180 days after January 18, 2019.
5 **(5)** PROGRAMS SUBJECT TO APPROVED EQUAL EMPLOYMENT OPPORTUNITY PLANS. A
6 sponsor of a registered apprenticeship program is required to adopt an affirmative action program
7 under s. DWD 296.05, or the selection of apprentice's procedure under s. DWD 296.20, unless any
8 of the following apply:
9 (a) A sponsor provides proof of compliance as prescribed in 29 CFR 30.4 (d) (2).
10 (b) The registered apprenticeship program has fewer than five apprentices.
11 **(6)** NOTICE ON FILING A COMPLAINT. A sponsor shall provide written notice as prescribed
12 under s. DWD 296.28 to all applicants and apprentices on how to file a discrimination complaint.
13 **DWD 296.05 Affirmative action program. (1)** ADOPTION OF AN AFFIRMATIVE ACTION
14 PROGRAM. (a) A sponsor of a registered apprenticeship program shall develop and maintain an
15 affirmative action program in a written plan, unless any of the following apply:
16 1. A sponsor provides satisfactory evidence of compliance with an equal opportunity
17 program providing for affirmative action in apprenticeship as prescribed in 29 CFR 30.4 (d) (2).
18 2. The registered apprenticeship program has fewer than five apprentices.
19 (b) The components of a written plan shall be developed in accordance with the respective
20 compliance dates and made available to the department upon request.
21 **(2)** CONTENTS OF AN AFFIRMATIVE ACTION PROGRAM. An affirmative action program under
22 sub. (1) shall include all of the following:
23 (a) Utilization analysis for race, sex, and ethnicity as prescribed under s. DWD 296.10.

1 (b) Establishment of utilization goals for race, sex, and ethnicity as prescribed under s.
2 DWD 296.12.
3 (c) Utilization goals for individuals with disabilities as prescribed under s. DWD 296.14.
4 (d) Targeted outreach, recruitment, and retention as prescribed under s. DWD 296.16.
5 (e) Review of personnel processes as prescribed under s. DWD 296.18.
6 (f) Invitations to self-identify as prescribed under s. DWD 296.22.
7 **(3)** WRITTEN AFFIRMATIVE ACTION PLANS. (a) A sponsor that is required to adopt an
8 affirmative action program under sub. (1), shall create and update a written affirmative action plan
9 memorializing and discussing the contents of the program identified under sub. (2)
10 (b) The initial written affirmative action plan for registered apprenticeship programs
11 existing as of January 18, 2018, shall be completed within 2 years of January 18, 2018. The written
12 affirmative action plan shall be updated every time the sponsor completes workforce analysis
13 required under ss. DWD 296.10 (2) and DWD 296.14 (2).
14 (c) The initial written affirmative action plan for apprenticeship programs registered after
15 January 18, 2018 shall be completed within 2 years of registration. The written affirmative action
16 plan shall be updated every time the sponsor completes workforce analysis required under ss.
17 DWD 296.10 (2) and DWD 296.14 (2).
18 **DWD 296.10 Utilization analysis for race, sex, and ethnicity**. (1) UTILIZATION
19 ANALYSIS. A utilization analysis provides sponsors with a method for assessing whether possible
20 barriers to apprenticeship exist for particular groups of individuals by determining whether the
21 race, sex, and ethnicity of apprentices in a sponsor's reinterested apprenticeship program is
22 reflective of individuals available for apprenticeship by race, sex, and ethnicity in the relevant

1 recruitment area. Where significant disparity exists between availability and representation, a
2 sponsor will be required to establish a utilization goal under s. DWD 296.12.

3 **(2)** ANALYSIS OF APPRENTICESHIP PROGRAM. A sponsor shall analyze the race, sex and
4 ethnic composition of their apprentice workforce. A sponsor shall group all apprentices in their
5 registered apprenticeship program by occupation title, then for each occupation represented, a
6 sponsor shall identify the race, sex and ethnicity of its apprentices within that occupation.

7 **(3)** SCHEDULE OF ANALYSIS. A sponsor shall conduct an apprenticeship program workforce
8 analysis at each compliance review and again if three years have passed without a compliance
9 review. The updated workforce analysis should be compared to the utilization goal established at
10 the sponsor's most recent compliance review to determine if the sponsor is underutilized as
11 prescribed under sub. (6).

12 **(4)** COMPLIANCE DATE. (a) An existing sponsor of a registered apprenticeship program as
13 of January 18, 2018 shall conduct its first workforce analysis under this section, no later than 2
14 years after January 18, 2018.

15 (b) A new sponsor registered after January 18, 2018 shall conduct its initial workforce
16 analysis under this section, no later than 2 years after the date of registration.

17 **(5)** AVAILABILITY ANALYSIS. (a) An availability analysis establishes a benchmark to
18 compare to the demographic composition of a sponsor's apprenticeship program to determine if
19 barriers to equal opportunity may exist in a sponsor's registered apprenticeship program.

20 (b) Availability is an estimate of the number of qualified individuals available for
21 apprenticeship by race, sex, and ethnicity expressed as a percentage of all qualified individuals
22 available for apprenticeship in a sponsor's relevant recruitment area.

(c) In determining availability, all of the following factors shall be considered for each major occupation group represented in a sponsor's registered apprenticeship program standards:

1. The percentage of individuals who are eligible for enrollment in the registered apprenticeship program within a sponsor's relevant recruitment area broken down by race, sex, and ethnicity.

2. The percentage of the sponsor's employees who are eligible for enrollment in the registered apprenticeship program.

(d) In determining availability, the relevant recruitment area is defined as the geographical area from which the sponsor usually seeks or reasonably could seek apprentices. A sponsor shall identify the relevant recruitment area in its written affirmative action plan under s. DWD 296.05 (3). A sponsor may not draw its relevant recruitment area if it would have the effect of excluding individuals based on race, sex, or ethnicity from consideration, and shall develop a brief rationale for selection of that recruitment area.

(e) Availability will be derived from the most current and discrete statistical information available.

Note: Examples of current and discrete statistical information may include census data, data from local job service offices and data from colleges or other training institutions.

(f) A sponsor, in working with the department, shall conduct an availability analysis at each compliance review.

(6) RATE OF UTILIZATION. To determine the rate of utilization, a sponsor, in working with the department, shall group each occupation title in the registered apprenticeship program by major occupation and compare the racial, sex and ethnic representation available in the relevant requirement area, as determined in sub. (5). When a sponsor's utilization of women, Hispanics or Latinos, or a particular racial minority group is significantly less than would be reasonable

expected given the availability of women, Hispanics or Latinos, for apprenticeship, a sponsor shall establish a utilization goal for the affected group as prescribed under sub. (5). Sponsors are not required or expected to establish goals where no significant disparity in utilization rates have been found.

DWD 296.12 Establishment of utilization goals for race, sex, and ethnicity. (1) A sponsor required to establish a utilization goal under s. DWD 296.10 for a particular racial, sex, or ethnic group in a major occupation in its registered apprenticeship program, in working with the department, shall establish a percentage goal at least equal to the availability figure under s. DWD 296.10 (5), for that major occupation group.

(2) A sponsor's determination under s. DWD 296.10 that a utilization goal is required does not constitute a finding or admission of discrimination.

(3) Utilization goals shall serve as objectives or targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work. Utilization goals are used to measure the effectiveness of a sponsor's outreach, recruitment and retention efforts. In establishing utilization goals, all of the following principles shall be applied:

(a) Utilization goals may not include rigid and inflexible quotas that must be met or be considered either a ceiling or a floor for the selection of particular groups as apprentices. Quotas are expressly forbidden.

(b) Utilization goals may not provide a sponsor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's status as an apprentice, because of that individual's race, sex, or ethnicity.

(c) Utilization goals shall not create set-asides for specific groups and are not intended to achieve proportional representation or equal results.

1 (d) Utilization goals may not be used to supersede eligibility requirements for
2 apprenticeship. Affirmative action programs prescribed in this chapter do not require sponsors to
3 select an individual who lacks qualifications to participate in the registered apprenticeship program
4 successfully or select a less-qualified person in preference to a more qualified one.

5 **DWD 296.14 Utilization goals for individuals with disabilities. (1)** UTILIZATION GOAL.
6 The department has established a utilization goal of 7 percent for employment of qualified
7 individuals with disabilities as apprentices for each major occupation group within each sponsor's
8 registered apprenticeship program. The utilization goal established in this paragraph a benchmark
9 a sponsor shall measure against the representation of individuals with disabilities in a sponsor's
10 registered apprenticeship program by major occupation group. The goal serves as an equal
11 opportunity objective that is attainable by complying with all of the affirmative action
12 requirements in this chapter.

13 **(2)** UTILIZATION ANALYSIS. A utilization analysis is designed to evaluate the representation
14 of individuals with disabilities in a sponsor's registered apprenticeship program grouped by major
15 occupation. If individuals with disabilities are represented in a sponsor's registered apprenticeship
16 program in any given major occupation at a rate less than the utilization goal of 7 percent, the
17 sponsor shall take specific measures prescribed under sub. (6) and (7).

18 **(3)** PROCESS. A sponsor shall analyze the representation of individuals within their
19 registered apprenticeship program by occupation. A sponsor shall group all apprentices according
20 to occupational titles represented in a sponsor's registered apprenticeship program. For each
21 occupation represented, a sponsor shall identify the number of apprentices with disabilities.

22 **(4)** SCHEDULE OF EVALUATION. A sponsor shall conduct the apprentice workforce analysis
23 at each compliance review and again when three years have passed without a compliance review.

1 The updated workforce analysis should then be compared to the utilization goal established under
2 sub. (1).
3 **(5)** COMPLIANCE DATE. (a) A sponsor with a registered apprenticeship program as of
4 January 18, 2018 shall conduct a workforce analysis under this section no later than 2 years after
5 January 18, 2018.
6 2. A sponsor registering an apprenticeship program after January 18, 2018 shall conduct its
7 initial workforce analysis under this section no later than 2 years after the date of registration.
8 **(6)** IDENTIFICATION OF PROBLEM AREAS. When a sponsor, working with the department,
9 determines the percentage of individuals under sub. (3) is less than the utilization goal established
10 under sub. (1), the sponsor shall take steps to determine if impediments to equal opportunities exist
11 and where impediments to equal opportunity exist. In making this determination, a sponsor shall
12 look at the results of its assessment of personnel processes required under s. DWD 296.18 and the
13 effectiveness of its outreach and recruitment efforts required under DWD 296.16, if applicable.
14 **(7)** ACTION ORIENTED PROGRAMS. A sponsor shall undertake action-oriented programs,
15 including targeted outreach, recruitment, and retention activities identified in s. DWD 296.16,
16 designed to correct any problem areas that a sponsor identified pursuant to the review of personnel
17 processes and outreach and recruitment efforts.
18 **(8)** UTILIZATION GOAL RELATION TO DISCRIMINATION. A determination that a sponsor has
19 not attained the utilization goal established under sub. (1) in one or more major occupation groups
20 does not constitute a finding or admission of discrimination in violation of this chapter.
21 **(9)** UTILIZATION GOAL NOT A QUOTA OR CEILING. The utilization goal established under
22 sub. (1) shall not be used as a quota or ceiling that limits or restricts the employment of individuals
23 with disabilities as apprentices.

DWD 296.16 Targeted outreach, recruitment, and retention. (1) MINIMUM ACTIVITIES REQUIRED. A sponsor that has found underutilization and established a utilization goal for a specific group under s. DWD 296.12, or DWD 296.14, shall undertake targeted outreach, recruitment, and retention activities that are likely to generate an increase in applications for apprenticeship and improve retention of apprentices from the targeted group or from individuals with disabilities. A sponsor under this section shall conduct all of the following:

(a) In the written affirmative action plan, identify the specific targeted outreach, recruitment, and retention activities planned for the upcoming program year. These activities shall include all of the following:

1. Distribution of information to organizations serving the underutilized group regarding the nature of apprenticeship, requirements for selection for apprenticeship, availability of apprenticeship opportunities and the equal opportunity pledge of the sponsor.

Note: Examples of these organizations include community-based organizations, local high school, local community colleges, local vocational, career and technical schools, and local workforce system partners including job centers.

2. Advertising openings for apprenticeship opportunities by publishing advertisements in appropriate media which have wide circulation in the relevant recruitment areas.

3. Cooperating with local school boards and vocational education system to develop or establish relationships with pre-apprenticeship programs targeting students from the underutilized group to prepare them to meet the standards and criteria required to qualify for entry into apprenticeship programs.

4. Establishing linkage agreements or partnerships enlisting the assistance and support of pre-apprenticeship program, community-based organization, advocacy organizations, or other appropriate organizations, in recruiting qualified individuals for apprenticeship.

1 (b) Evaluate and document after every selection cycle for registering apprentices, the
2 overall effectiveness of the activities.
3 (c) Refine targeted outreach, recruitment, and retention activities as needed.
4 (d) Maintain records of the targeted outreach, recruitment, and retention activities and
5 records related to the evaluation of these activities.
6 **(2)** OTHER ACTIVITIES. In addition to the activities in sub. (1), sponsors are encouraged to
7 consider other outreach, recruitment, and retention activities that may assist sponsors in addressing
8 any barriers to equal employment opportunity in its registered apprenticeship program. These
9 activities may include any of the following:
10 (a) Enlisting the use of journeyworkers from the underutilized group to assist in the
11 implementation of a sponsor's affirmative action program.
12 (b) Enlisting the use of journeyworkers from the underutilized group to mentor apprentices
13 and to assist a sponsor's targeted outreach and recruitment activities.
14 (c) Conducting exit interviews of each apprentice who leaves the sponsor's registered
15 apprenticeship program prior to receiving a certificate of completion to understand better why the
16 apprentice is leaving the program and to help shape the sponsor's retention activities.
17 **DWD 296.18 Review of personnel processes. (1)** ANNUAL REVIEW. A sponsor shall
18 engage in an annual review of its personnel processes to ensure that the sponsor is operating a
19 registered apprenticeship program free from discrimination based on race, color, religion, national
20 origin, sex, sexual orientation, age (40 or older), genetic information, and disability. A review
21 under this section is required regardless if a sponsor is underutilized under s. DWD 296.10 and
22 shall include a review of all aspects of the registered apprenticeship program at the program,
23 industry, and occupational level, and include all of the following:

1 (a) The qualifications for apprenticeship, application, and selection procedures.

2 (b) Wages.

3 (c) Outreach and recruitment activities.

4 (d) Advancement opportunities.

5 (e) Promotions.

6 (f) Work assignments.

7 (g) Job performance.

8 (h) Rotations among all work processes of the occupation.

9 (i) Disciplinary actions.

10 (j) Handling of requests for reasonable accommodations.

11 (k) The program's accessibility to individuals with disabilities, including the use of

12 information and communication technology.

13 **(2)** COMPLIANCE DATE. (a) A sponsor that has a registered apprenticeship program as of

14 January 18, 2018 shall comply with the obligations under sub. (1) within 2 years of January 18, 2018.

15 (b) A sponsor registered with the department after January 18, 2018, shall comply with the

16 obligations of sub. (1) within 2 years after the date of registration.

17 **(3)** MODIFICATIONS REQUIRED. Any necessary modifications identified under sub. (1) shall

18 be implemented into the sponsor's written affirmative action plan to ensure that obligations under

19 this section are met. A sponsor shall include a description of its review in the written affirmative

20 action plan and identify in the written plan any modifications made, or the modifications that will

21 be made, to the program as a result of the review.

DWD 296.20 Selection of apprentices. (1) A sponsor's procedures for the selection of apprentices shall be included in the written plan for standards of apprenticeship submitted to and approved by the department under DWD 295.02.

(2) A sponsor may utilize any method, or combination of methods, for selection of apprentices if the selection method meets the requirements under 29 CFR 30.10 (b).

Note: 29 CFR 30.10 (b) reads: Sponsors may utilize any method or combination of methods for selection of apprentices, provided that the selection method(s) used meets the following requirements:

(1) The selection procedures comply with the Uniform Guidelines Employee Selection Procedures (UGESP) in 41 CFR 60.3, including the requirement to evaluate the impact of the selection procedures on race, sex, and ethnic groups and to demonstrate job-relatedness and business necessity for those procedures that result in adverse impact in accordance with the requirements of UGESP.

(2) The selection procedures are uniformly and consistently applied to all applicants within each selection procedure utilized.

(3) The selection procedures comply with title I of the American's Disability Act and EEOC's implementing regulations under part 1630. Procedures shall not screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, because of disability, unless the standard, test or other selection criteria used by the sponsor, is shown to be job-related for the position in questions and is consistent with the business necessity.

(d) The selection procedure is facially neutral in terms of race, color, religion, national origin, sex, sexual orientation, age, genetic information, and disability.

DWD 296.22 Invitation to self-identify as an individual with a disability. (1) PRE-OFFER INVITATION. A sponsor adopting an affirmative action program under s. DWD 296.05, shall invite applicants for apprenticeship to inform the sponsor whether the applicant believes they are an individual with a disability as defined in s. DWD 296.01(12). This invitation shall be provided to each applicant when the applicant applies or is considered for apprenticeship. The invitation may be included with the application materials for apprenticeship but shall be separate from the application.

(2) POST-OFFER INVITATION. Any time after acceptance into the registered apprenticeship program, but before the applicant begins their apprenticeship, a sponsor shall invite the applicant

to inform the sponsor whether the applicant believes they are an individual with a disability as defined under DWD 296.01(12).

(3) APPRENTICES. Within the time frame identified under sub. (7) a sponsor shall provide a one-time invitation to each current apprentice, the opportunity to inform that sponsor if the apprentice is an individual with a disability as defined under s. DWD 296.01(12). A sponsor shall make this invitation using the language and manner prescribed by the U.S. Department of Labor, Employment and Training Administration. A sponsor shall remind apprentices on a yearly basis that the apprentice may voluntarily update their disability.

Note: You can access the U.S. Department of Labor, Employment Training Administration online at https://www.doleta.gov/oa/eeo/tools/disabililty-self-identification.cfm or call (866) 487-2365.

(4) VOLUNTARY SELF-IDENTIFICATION FOR APPRENTICES. A sponsor shall not compel or coerce an individual to self-identify as an individual with a disability.

(5) CONFIDENTIALITY. A sponsor shall keep all information on self-identification confidential and shall maintain the information in a data analysis file and not the medical files of individual apprentices as prescribed under s. DWD 296.10 (5). A sponsor shall provide self-identification information to the department as requested and only used in accordance with this chapter.

(6) OBLIGATION OF SPONSOR. A sponsor under this section is not relieved of its obligation to take affirmative action with respect to the applicants and apprentices who identified as an individual with a disability. In addition, a sponsor is not relieved of its liability for discrimination in violation of this section.

(7) COMPLIANCE DATES. (a) A sponsor with a registered apprenticeship program shall begin inviting applicants and apprentices to identify as individuals with a disability under this

1 section, no later than 2 years after January 18, 2018. A sponsor shall invite each of its current
2 apprentices to voluntarily inform the sponsor whether the apprentice believes that they are an
3 individual with a disability, as defined under s. DWD 296.01 (12) no later than 2 years after
4 January 18, 2018.

5 (b) A sponsor registering with the department after the January 18, 2018, shall begin
6 inviting applicants and apprentices to identify as individuals with disabilities, as prescribed in this
7 section, no later than 2 years after the date of registration. A sponsor under this section shall also
8 invite each of its current apprentices to voluntarily inform the sponsor whether the apprentice
9 believes that they are an individual with a disability as defined under s. DWD 296.01 (12), no later
10 than 2 years after the date of registration.

11 **DWD 296.24 Recordkeeping. (1)** OBLIGATIONS OF SPONSORS. A sponsor shall collect
12 data and maintain adequate records necessary for the department to determine if a sponsor is
13 complying with the requirements of this chapter. At a minimum, records shall include all of the
14 following:

15 (a) Selection for apprenticeship, including applications, tests and test results, interview
16 notes, the bases for selection or rejection, and any other records required to be maintained under
17 UGESP.

18 (b) The invitation to self-identify as an individual with a disability under s. DWD 296.22.

19 (c) Information relating to the operation of the registered apprenticeship program,
20 including job assignments in all components of the occupation, promotion, demotion, transfer,
21 layoff, termination, rates of pay or other forms or compensation, conditions of work, hours of
22 work, hours of training provided and any other personnel records relevant to complaints filed with
23 the department under s. DWD 296.28 or other enforcement agencies.

1 (d) Proof of compliance with the requirements under s. DWD 296.04.

2 (e) Requests for reasonable accommodations.

3 (f) Any other records pertinent to a determination of compliance with this chapter.

4 **(2)** SPONSOR IDENTIFICATION OF RECORD. For each record maintained under this chapter, a
5 sponsor shall be able to identify the race, sex, ethnicity, and when known, the disability status of
6 each apprentice. Where possible, a sponsor shall be able to identify the race, sex, ethnicity and
7 disability status of each applicant to apprenticeship. A sponsor shall supply the information to the
8 department upon request.

9 **(3)** AFFIRMATIVE ACTION PROGRAMS. A sponsor required under s. DWD 296.05 to develop
10 and maintain an affirmative action program shall retain both the written affirmative action plan
11 under s. DWD 296.05 (3) and documentation of its component elements under ss. DWD 296.10 to
12 DWD 296.18 and DWD 296.22.

13 **(4)** MAINTENANCE OF RECORDS. All records required under this chapter and any other
14 information relevant to compliance with this chapter, shall be maintained for 5 years from the date
15 of making the record or the personnel action involved, whichever occurs later, and shall be made
16 available as requested by the department or other authorized representative in a form determined
17 by the department, necessary to determine compliance. Failure to maintain records under this
18 chapter constitutes noncompliance.

19 **(5)** CONFIDENTIALITY AND USE OF MEDICAL INFORMATION. Any information obtained
20 under this chapter regarding the medical condition or history of an applicant or apprentice shall be
21 collected and maintained on separate forms and in separate medical files, and treated as a
22 confidential medical record except when any of the following apply:

1 (a) Supervisors and managers may be informed regarding necessary restrictions on the
2 work or duties of the applicant or apprentice and necessary accommodations.
3 (b) First aid and safety personnel may be informed if the disability might require
4 emergency treatment.
5 (c) Government officials engaged in enforcement of this chapter, the laws administered by
6 the U.S. Department of Labor's Office of Federal Contract Compliance Programs, or the ADA,
7 shall be provided relevant information on request.
8 **(6)** ACCESS TO RECORDS. A sponsor shall allow access to the department, during normal
9 business hours, to the places of business for the purpose of conducting on-site EEO compliance
10 reviews, complaint investigations and inspecting and copying books, accounts and records,
11 including electronic records, and any other material the department deems relevant to the matter
12 under investigation and pertinent to compliance with this chapter. A sponsor shall also provide the
13 department access to these materials, including electronic records, off-site for purposes of
14 conducting EEO compliance reviews and complaint investigations. A sponsor shall provide the
15 department information about all formats, including specific electronic formats, in which the
16 records and other information are available.
17 **DWD 296.26 Equal employment opportunity compliance review. (1)** DEPARTMENT
18 REVIEW. The department shall conduct EEO compliance reviews to determine if a sponsor is in
19 compliance with this chapter regularly, or when circumstances warrant a review.
20 **(2)** CONDUCT OF COMPLIANCE REVIEWS. An EEO compliance review may include any of
21 the following:
22 (a) A comprehensive analysis and evaluation of each aspect of the registered apprenticeship
23 program through off-site reviews.

Note: An example of an off-site review may include desk audits of records submitted to the department.

(b) On-site reviews conducted at the sponsor's establishment that may involve examination of records, inspection and copying of documents related to recordkeeping requirements, and interviews with employees, apprentices, journeyworkers, supervisors, managers, and hiring officials.

(3) NOTIFICATION OF COMPLIANCE REVIEW FINDINGS. Within 45 business days of completing an EEO compliance review, the department shall present a written notice of compliance review findings to the sponsor. If the compliance review indicates a failure to comply with this chapter, the department shall inform the sponsor in writing and include in the notice, all of the following:

(a) The deficiencies identified.

(b) How to remedy the deficiencies.

(c) The timeframe within which the deficiencies must be corrected.

(d) Enforcement actions that may be taken if compliance is not achieved within the required timeframe.

(4) COMPLIANCE. (a) Within 30 days of a sponsor receiving a notice of compliance review with findings that indicate a failure to comply with this chapter, the sponsor shall implement a compliance action plan and notify the department of the plan, or submit a written rebuttal to the findings to the department. A sponsor may request a one-time, 30-day extension.

(b) If the sponsor submits a written rebuttal to the notice of compliance review findings to the department under par. (a), the department may do any of the following:

1. Uphold the notice of compliance review findings.

2. Modify the notice of compliance review findings in whole, or in part.

(c) If the department upholds the notice of compliance review findings after receiving a written rebuttal from the sponsor, a sponsor shall implement a compliance action plan within 30 days of receiving the notice from the department upholding the findings.

(d) A compliance action plan required under par. (a) or (c) shall include, at a minimum, all of the following:

1. A specific commitment, in writing, to correct or remediate the identified deficiencies and areas of noncompliance.

2. The precise actions to be taken for each deficiency identified.

3. The time period within which the cited deficiencies will be remedied and any corrective program changes implemented.

4. The name of the individual responsible for correcting each deficiency identified.

(e) Upon the department's approval of the compliance action plan, a sponsor may be considered in compliance under this chapter provided that the compliance plan is implemented.

(5) ENFORCEMENT ACTIONS. A sponsor that fails to implement a compliance action plan within the specified timeframes may be subject to an enforcement action under DWD 296.30.

DWD 296.28 Complaints. (1) REQUIREMENTS FOR INDIVIDUALS FILING COMPLAINTS. (a) If an applicant or apprentice of a registered apprenticeship program believes they have been discriminated against because of race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability with regard to apprenticeship, or being retaliated against as described under s. DWD 296.34, the applicant or apprentice of a registered apprenticeship program, or the applicant's or apprentice's authorized representative, may file a written complaint with the department.

1 (b) A complaint under par. (a) shall be filed within 300 days of the alleged discrimination
2 or failure to follow the equal opportunity standards. The department may extend the filing time for
3 good cause shown. The time period for filing is for the administrative convenience of the
4 department and does not create a defense for the respondent.
5 (c) Each complaint filed under par. (a) shall be made in writing and contain all of the
6 following information:
7 1. The applicant's or apprentice of a registered apprenticeship program's name, address and
8 telephone number, including best method of contact.
9 2. All available information to identify the respondent including, name, address, and
10 telephone number.
11 3. A short description of the events that occurred that the applicant or apprentice of a
12 registered apprenticeship program believes are discriminatory or a failure to follow equal
13 opportunity standards. Include the date and location the events took place, and why the applicant
14 or apprentice believes the actions were discriminatory or a failure to follow equal opportunity
15 standards. This may include because of the applicant's or apprentice's race, color, religion, sex,
16 sexual orientation, national origin, age (40 or older), genetic information or disability.
17 4. The applicant's or apprentice's signature, or the signature of the applicant's or
18 apprentice's authorized representative.
19 **(2)** REQUIREMENTS OF SPONSORS. A sponsor of a registered apprenticeship program shall
20 provide written notice to all applicants and apprentices of a registered apprenticeship program, of
21 their right to file a complaint and to identify the procedures to file. The notice shall include the
22 name, address and telephone number of the department and be provided in the application for

1 apprenticeship and displayed in a prominent, publicly available location where all apprentices will
2 see the notice. The notice shall the following, specific wording:

3 **Your Right to Equal Opportunity**. It is against the law for a sponsor of an
4 apprenticeship program registered for Federal purposes to discriminate against an apprenticeship
5 applicant or apprentice based on race, color, religion, national origin, sex, sexual orientation, age
6 (40 years or older), genetic information, or disability. The sponsor must ensure equal opportunity
7 with regard to all terms, conditions, and privileges associated with apprenticeship. If you think that
8 you have been subjected to discrimination, you may file a complaint within 300 days from the date
9 of the alleged discrimination or failure to follow the equal opportunity standards with [INSERT
10 NAME OF REGISTRATION AGENCY, ADDRESS, PHONE NUMBER, EMAIL ADDRESS,
11 AND CONTACT NAME OF INDIVIDUAL AT THE REGISTRATION AGENCY WHO IS
12 RESPONSIBLE FOR RECEIVING COMPLAINTS]. You may also be able to file complaints
13 directly with the EEOC, or the Wisconsin equal rights division. If those offices have jurisdiction
14 over the sponsor/employer, their contact information is listed below. [INSERT CONTACT
15 INFORMATION FOR EEOC AS PROVIDED ON "EEO IS THE LAW POSTER," AND
16 CONTACT INFORMATION FOR THE WISCONSIN EQUAL RIGHTS DIVISION AS
17 PROVIDED ON THE WISCONSIN EQUAL RIGHTS DIVISION POSTER, AS APPLICABLE]

18 **(3)** REQUIREMENTS OF THE DEPARTMENT. (a) Complaints received by the department under
19 sub. (1) shall be processed as expeditiously as possible. When conducting complaint
20 investigations, the department shall do all of the following:

21 1. Provide written notice to the applicant or apprentice of a registered apprenticeship
22 program, acknowledging receipt of the complaint.

2. Contact the applicant or apprentice of a registered apprenticeship program to obtain additional information if necessary, to initiate an investigation.

3. Initiate an investigation upon receiving a complete complaint.

4. Conduct a thorough investigation of the allegations in the complaint and document, at a minimum, all of the following:

a. Name, address and telephone number of each individual interviewed.

b. Interview statements.

c. Copies, transcripts or summaries of pertinent documents.

d. A narrative report of the investigation with references to exhibits and other evidence related to the alleged violations.

e. Provide written notification of the department's findings to both the respondent and applicant or apprentice of a registered apprenticeship program.

(b) If the department finds a violation of the nondiscrimination requirements under this chapter, the department shall attempt to resolve the matter as quickly as possible at the department level. If a complaint of discrimination cannot be resolved to the satisfaction of the applicant or apprentice, the department shall refer the complaint to other federal, state or local EEO agencies.

(c) On its own discretion, the department may refer a complaint to any of the following:

1. The United States Equal Employment Opportunity Commission.

2. The United States Attorney General.

3. The Department of Labor's Office of Federal Contract Compliance Programs.

4. The Wisconsin Equal Rights Division.

DWD 296.30 Enforcement actions. (1) If the department determines that a sponsor is not operating its registered apprenticeship program as specified under this chapter because of a

1 compliance review, complaint investigation or other reason, the department shall notify the
2 sponsor in writing and identify the specific violations.
3 **(2)** Enforcement action that the department may take if a violation under sub. (1) occurs,
4 may include any of the following:
5 (a) Offering the sponsor technical assistance to promote compliance.
6 (b) 1. Suspending the sponsor's right to register new apprentices if the sponsor fails to
7 implement a compliance action plan to correct the violation identified within 30 business days
8 from the date the sponsor is notified; or, if the sponsor submits a written response to the findings
9 of noncompliance, and fails to implement a compliance action plan within 30 days of receiving the
10 department notice upholding the initial noncompliance findings.
11 2. If a sponsor has not implemented a compliance action plan within 30 business days of
12 notification of suspension, the department may begin proceedings to deregister the sponsor's
13 registered apprenticeship program as prescribed under s. DWD 295.21. If the department does not
14 begin proceedings to deregister the sponsor's program under this paragraph within 45 days of the
15 state of the suspension, the suspension is lifted.
16 (c) Take other action authorized by law that may include referral to any of the following:
17 1. The United States Equal Employment Opportunity Commission.
18 2. Wisconsin equal rights division.
19 3. The U.S. Department of Labor's Office of Federal Contract Compliance Programs.
20 **DWD 296.32 Appeal procedure.** A sponsor that is deregistered by the department under
21 s. DWD 296.30 (2) (b) 1., may file a written appeal with the department as prescribed under s.
22 DWD 295.23.

1 **DWD 296.34 Intimidation and Retaliation Prohibited.** (1) An applicant or apprentice in
2 a registered apprenticeship program shall not be intimidated, threatened, coerced, retaliated
3 against, or discriminated against because the individual has done any of the following:
4 (a) Filed a complaint under s. DWD 296.28.
5 (b) Opposed a practice prohibited by this chapter or any other federal or state equal
6 opportunity law.
7 (c) Furnished information to, assisted or participated in any investigation, compliance
8 review, proceeding, or hearing under this chapter or any federal or state equal opportunity law.
9 (d) Exercised any rights and privileges under the provisions of this chapter.
10 **(2)** A sponsor that permits the intimidation or retaliation against an applicant or apprentice
11 in a registered apprenticeship program, including intimidation or retaliation by participating
12 employers, is subject to enforcement under s. DWD 296.30 if the sponsor fails to take appropriate
13 steps to prevent the intimidation or retaliation.
14 **DWD 296.36 Reinstatement of program registration.** An apprenticeship program that
15 has been deregistered for failure to comply with this chapter may be reinstated if the sponsor
16 provides evidence to the department that the apprenticeship program is operating as prescribed in
17 this chapter.
18 **DWD 296.38 Exemptions.** A sponsor may request an exemption from any part of this
19 chapter by providing the department with a written statement that identifies the reasons to support
20 the request. The department may grant an exemption in writing for good cause.
21 **SECTION 3.** EFFECTIVE DATE. This rule shall take effect upon publication in the
22 state newspaper on January 18, 2019, under s. 227.27 (1) (c), Stats.

Signed this _____ day of _____, 2019.

_____
Caleb Frostman, Secretary

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
☒ Original ☐ Updated ☐ Corrected

2. Date
1/22/2018

3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)
ch. DWD 295 Apprenticeship
ch. DWD 296 Federal Equal Opportunity Standards for Apprenticeship Programs

4. Subject
Implement federal regulations in the apprenticeship program to comply with federal equal employment opoprtunity Standards.

5. Fund Sources Affected
☐ GPR ☒ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

6. Chapter 20, Stats. Appropriations Affected
20.445 (1) (b) and (1) (nd)

7. Fiscal Effect of Implementing the Rule
☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs ☐ Decrease Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget

8. The Rule Will Impact the Following (Check All That Apply)
☐ State's Economy
☐ Local Government Units
☒ Specific Businesses/Sectors
☐ Public Utility Rate Payers
☐ Small Businesses **(if checked, complete Attachment A)**

9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).
$0

10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be $10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?
☐ Yes ☒ No

11. Policy Problem Addressed by the Rule
The department is directed to incorporate rules for all apprenticeship programs registered with the state for federal purposes to comply with the requirements of the state equal employment opportunity plan and promulgate rules that correspond to the requirements under 29 CFR 29 and 29 CFR 30. Because Wisconsin is recognized as a state apprenticeship agency, federal regulations required states to incorporate the changes made under 29 CFR 29 and 29 CFR 30.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.
This rule will impact businesses with registered apprenticeship programs, businesses that apply for registered apprenticeship programs, applicants for apprenticeship and apprentices in a registered apprenticeship program.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.
The department provided an opportunity for the public, including local governmental units, to submit comments on the economic impact for 14 days. The department did not receive any comments.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)
This rule will impact specific businesses that hire apprentices. Federal regulations prohibit the discrimination and harassment of an applicant for apprenticeship or an apprentice in a registered apprenticeship program because of their race, color, religion, national origin, sex, sexual orientation, age (40 or older), genetic information, or disability. There are no implementation or compliance costs expected to be incurred by implementing this rule.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
The department is recognized by the U.S. Department of Labor, Office of Apprenticeship, as a state apprenticeship agency. If the department does not promulgate an emergency rule, the department will be at risk of losing this recognition and will not be permitted to register apprentices.

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ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

16. Long Range Implications of Implementing the Rule
The department will maintain federal recognition as a state apprenticeship agency.

17. Compare With Approaches Being Used by Federal Government

The rule reflects changes under federal regulations 29 CFR 29 (Labor Standards for the Registration of Apprenticeship) and 29 CFR 30 (Equal Employment Opportunity in Apprenticeship). Prior to an update in January 2017, the federal regulations were last revised in 1978, prohibiting discrimination based on race, sex, color, religion and national origin and requiring sponsors with more than five apprentices to develop and implement a written affirmative action plan for minorities and the inclusion of female apprentices. Currently, these regulations are intended to provide for more uniform training of apprentices and promote equal opportunity in apprenticeship.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Minnesota operates a recognized state apprenticeship agency organized under 29 CFR 29.13 (Minn. Stat. Ch. 178). Illinois, Iowa and Michigan have not established state apprenticeship agencies and registered apprenticeship in those states operates under federal law only.

19. Contact Name	20. Contact Phone Number
Karen Morgan	608-266-3133

This document can be made available in alternate formats to individuals with disabilities upon request.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements
☐ Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☐ No