

HAWAII ADMINISTRATIVE RULES

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 5

APPRENTICESHIP DIVISION

CHAPTER 30

APPRENTICESHIP PROGRAMS

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Historical Note: Chapter 30 of title 12 is based substantially upon Regulation XLIV, Relating to Apprenticeship Programs, Department of Labor and Industrial Relations, State of Hawaii. [Eff. 7/21-/78; R 7/30/81]

§12-30-1 Definitions. As used herein:

"Apprentice" shall be as defined, in section 372-2, HRS

"Apprenticeship agreement" shall be as defined in section 372-2, HRS.

"Apprenticeship committee" means those persons designated by the sponsor to act for it in the administration of the program. A "joint" committee is composed of an equal number of representatives of the employers and of the employees represented by a bona fide collective bargaining agent. A "unilateral" or "non-joint" committee is composed of representatives of the employers and does not include a bona fide collective bargaining agent as a participant.

"Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

"Apprenticeship standard" means the written document which sets forth the minimum labor standards required by law for training

apprentices in a specified industry, area, or plant. By reference, it is a part of the apprenticeship agreement. There are two basic types of standards--one encompasses joint employer-union participation in the program; and one, referred to as unilateral, where responsibility for apprenticeship is assumed by either management or the union, but not both.

"Department" shall be as defined in section 372-2, HRS.

"Director" shall be as defined in section 372-2 HRS.

"Employer" means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

"Registration of an apprenticeship agreement" means the acceptance and recording of the agreement by the department as evidence of the participation of the apprentice in a particular registered apprenticeship program.

"Registration of an apprenticeship program" means the acceptance and recording of such program by the department as meeting the basic standards and requirements of the department for approval of such program. Written approval shall be given by the department.

"Related instruction" means an organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the trade.

"Rule" shall be as defined in section 91-1, HRS.

"Sponsor" means any person, corporation, association, committee, or organization operating an apprenticeship program and in whose name the program is approved and registered. (Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §372-2)

§12-30-2 Purpose and scope. (a) Section 372-5, HRS, authorizes and directs the director to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices and to extend the application of such standards by requiring the inclusion thereof in apprenticeship programs.

(b) The purpose of this chapter is to set forth rules to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing rules concerning the registration of acceptable apprenticeship programs. These rules cover the standards of apprenticeship, registration, cancellation and deregistration of apprenticeship programs and of apprenticeship agreements, and matters relating thereto.

(c) The provisions of this chapter shall apply to a person, firm, corporation, association, committee organization, or craft only after such person, firm, corporation, association, committee, organization, or craft has elected to comply with its provisions. [Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §§5372-3, 372-5)

§12-30-3 Eligibility for registration. (a) No apprenticeship

program or agreement shall be eligible for registration unless it conforms with section 12-30-6; Administrative Rules, section 12-31-3; and chapter 372, HRS.

(b) Apprenticeship programs and standards of employers and unions, except for building and construction industry, which jointly form a sponsoring entity on a multi-state basis and are registered by any other recognized state apprenticeship agency or council or by the Bureau of Apprenticeship and Training, U.S. Department of Labor, shall be accorded registration or approval reciprocity by the department if such reciprocity is requested by the sponsoring entity. All program registrations shall conform to subsection (a). [Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §372-5)

§12-30-4 Registration procedures. (a) Under a program sponsored for registration by an employer or employers' association, where the standards, collective bargaining agreement, or other instrument provide for participation by a union in any matter in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgment of union agreement to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of its apprenticeship program for registration. The department shall provide a period of sixty days for receipt of union comments, before final action or approval.

(b) Where 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.

(c) If the sponsor is involved in any abnormal labor situation such as a strike, lockout, or other similar situation, the approval of an application for an apprenticeship program may be withheld by the department until such time as the department determines that the situation is resolved.

(d) If it is determined by the department that a sponsor is in violation of any federal or state labor laws or rules and regulations affecting registration of programs, the approval of the application for an apprenticeship program may be withheld by the department until the department determines that such issues are resolved.

(e) Approved apprenticeship programs shall be accorded registration, evidenced by written approval by the department.

(f) Any proposed modification or change to registered programs shall be promptly submitted to the department, and if approved, shall be recorded and acknowledged as a revision of such programs. [Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §372-5)

§12-30-5 Criteria for apprenticeable occupations. An

apprenticeable occupation is a skilled trade which possesses all of the following characteristics:

- (1) It is customarily learned in a practical way through a structured systematic program of on-the-job supervised training;
- (2) It is clearly identified and commonly recognized throughout an industry;
- (3) It involves manual, mechanical, or technical skills and knowledge which require not less than twelve months or two thousand hours of reasonably continuous employment; and
- (4) It requires related instruction to supplement the on-the-job training. [Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §372-5)

§12-30-6 Standards of apprenticeship. An apprenticeship program shall be eligible for registration by the department if it conforms to the following standards:

- (1) The program is an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in the apprenticeable occupation, and subscribed to by a sponsor who has undertaken to carry out the apprentice training program;
- (2) The program standards contain the equal opportunity pledge prescribed in section 12-31-3(b), Administrative Rules, and, when applicable, an affirmative action plan and a selection method in accordance with sections 12-31-4 and 12-31-6, Administrative Rules, and provisions concerning the following:
 - (A) A statement of the trade or craft to be taught and the required hours for completion of apprenticeship which shall be not less than twelve months or two thousand hours of reasonably continuous employment, consistent with training requirements as established by industry practice;
 - (B) A statement of the number of hours or months to be spent by the apprentice in work on the job and 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;
 - (C) A statement of the number of hours to be spent in organized related instruction in technical subjects related to the trade, approved by the state department of education or by the community college system, University of Hawaii, which shall be not less than one hundred and forty-four hours per year and whether or not the required school time shall be

compensated; provided that the department may, in the best interest of apprenticeship, reduce the number of hours of related instruction; which instruction may be given in a classroom through trade or industrial courses, or by correspondence courses of equivalent value, or other forms of self-study approved by the department;

- (D) A statement that apprentices shall be not less than sixteen years of age;
- (E) A statement of the progressively increasing scale of wages to be paid the apprentice consistent with the skill acquired, the entry wage to be not less than the Minimum wage prescribed by the Federal Fair Labor Standards Act of 1938, as amended, section 6 thereof, (29 U.S.C., section 206), where applicable, unless a higher wage is required by other applicable federal or state law, administrative rules, or by bargaining agreement;
- (F) A provision for a probationary period reasonably related to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship;
- (G) A provision that during the period of probation, the director shall cancel an apprenticeship agreement at the request in writing of any party thereto;
- (H) A provision that after the probationary period, the director may cancel an apprenticeship agreement:
 - (i) Upon agreement of the parties thereto;
 - (ii) At the request of the apprentice;
 - (iii) Upon recommendation by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action;
or
 - (iv) For good cause on the director's own motion after giving all parties notice and opportunity to be heard;
- (I) A provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where the differences cannot be adjusted by the parties or in accordance with the established trade procedure, and that any such differences which cannot be amicably settled by the parties may be submitted to the director for final decision;
- (J) A provision for the numeric ratio of apprentice to journeyworkers consistent with proper supervision, training, safety, and reasonable continuity of

employment, and applicable provisions in collective bargaining agreements, in relation to which it is recommended that a ratio of no more than one apprentice for each journeyworker regularly employed by a participating employer in each apprenticeable occupation be established;

- (K) A provision for transfer of employer's training obligation when the employer is unable to fulfill the obligation under the apprenticeship agreement, to another employer under the same program with the consent of the apprentice and apprenticeship committee or program sponsor, with full credit to the apprentice for satisfactory time and training earned;
- (L) A provision for minimum qualifications required by a sponsor for persons entering the apprenticeship program;
- (M) A provision for granting of an advanced standing or credit for previously acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted;
- (N) A provision that the apprentice shall be provided adequate and safe equipment and facilities for training and supervision and safety training on the job and in related instruction, and that the employer shall insure that the apprentice is trained in facilities and other environments that are in compliance with federal and state occupational safety and health standards;
- (O) A provision for the placement of an apprentice under a written apprenticeship agreement, which shall directly, or by reference, incorporate the standards of the programs as part of the agreement;
- (P) A provision for periodic review and evaluation of the apprentice's progress in job performance and in related instruction by the program sponsor and the department, and the maintenance of appropriate progress records;
- (Q) A provision for recognition of successful completion of apprenticeship evidenced by an appropriate certificate;
- (R) Identification of the registration agency as apprenticeship division, department of labor and industrial relations;
- (S) Assurance of qualified training ,personnel and adequate supervision on the job;
- (T) A provision for the registration, cancellation, and

deregistration of the program, and requirement for the prompt submission of any modification or revision thereto;

- (U) A provision for registration of apprenticeship agreements and revisions, notice to the department of persons who have successfully completed apprenticeship programs, and notice of cancellations and suspensions of apprenticeship agreements and causes therefor;
- (V) A statement of the committee's organization and functions when the program sponsor is a joint apprenticeship committee;
- (W) The name and address of the appropriate authority under the program to receive, process, and make disposition of complaints; and
- (X) A provision that apprenticeship standards shall comply with federal and state laws, and rules pertaining to apprenticeship. [Eff. 7/30/81] (Auth: HRS §372-3) (Imp: HRS §372-3)

§12-30-7 Apprenticeship agreement. (a) Apprentices shall be individually registered under a registered program. Registration shall be effected by filing copies of each apprenticeship agreement with the department.

(b) The apprenticeship agreement shall contain explicitly or by reference:

- (1) Name and signature of the contracting parties (apprentice and the program sponsor or employer) and the signature of a parent or guardian if the apprentice is a minor;
- (2) The date of birth of apprentice;
- (3) Name and address of the program sponsor and registration agency;
- (4) A statement of the trade or craft in which the apprentice is to be trained and the beginning date and term of apprenticeship; and
- (5) A reference incorporating as part of the agreement the 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. [Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §372-5)

§12-30-8 Cancellation or temporary suspension of apprenticeship agreement. The department may cancel or temporarily suspend an apprenticeship agreement upon concurrence of the parties thereto, or at the request of the apprentice, or upon recommendation by the sponsor, or, on the director's own motion.

- (1) On request of the apprentice or upon agreement of the

parties, the director may cancel or temporarily suspend the registration of an apprenticeship agreement by a written acknowledgment of such request to all parties affected, and giving the effective date of such cancellation or temporary suspension.

- (2) The director may cancel or temporarily suspend the registration of an apprenticeship agreement upon recommendation of the sponsor, or on the director's own motion. The director shall notify the appropriate parties in writing.
 - (A) The notice shall be sent by certified mail, return receipt requested, shall state the reasons for the cancellation or suspension action, and shall state that the apprenticeship agreement will be cancelled or suspended unless, within ten workdays of receipt of the notice, the apprentice or sponsor contest the proposed action.
 - (B) If a hearing is requested, the hearing shall be held in accordance with section 12-30-10. [Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §372-5)

§12-30-9 Deregistration of apprenticeship program. (a)

Deregistration of a program may be by the voluntary action of the sponsor or, upon good cause, by the department through deregistration proceedings in accordance with the provisions of this chapter.

(b) The director may cancel the registration of an apprenticeship program by a written acknowledgment of a sponsor's request stating, but not limited to, the following:

- (1) The registration is canceled at sponsor's request with notice of intent to all parties affected, and giving the effective date of such cancellation
 - (2) That within fifteen work days of the date of the acknowledgment, the sponsor shall notify all apprentices of such cancellation and the effective date and that such cancellation automatically deprives the apprentices of their individual registration.
- (c) Deregistration by department.
- (1) Deregistration proceedings may be undertaken when it appears that the apprenticeship program is not conducted, operated, or administered in accordance with the registered standards, chapter 372, HRS, or this chapter; whereupon, the director shall so notify the program sponsor in writing.
 - (2) The notice shall be sent by certified mail, return receipt requested, and shall state that the program will be deregistered and the cause therefor unless corrective action is taken within thirty days upon receipt of notice.

- (3) Upon request by the sponsor for good cause, the thirty-day period may be extended for up to one additional thirty-day period. During the period for correction, the sponsor shall be assisted in every reasonable way by the department.
- (4) If the required action is not taken within the allotted time, the director shall send a notice to the sponsor by certified mail, return receipt requested, stating the following:
 - (A) The notice is sent pursuant to this subsection;
 - (B) That certain deficiencies were called to the sponsor's attention and remedial actions requested;
 - (C) That the program will be deregistered unless, within fifteen workdays of receipt of notice, the sponsor requests a hearing; and
 - (D) If a hearing is not requested by the sponsor, the program will be automatically deregistered.
- (5) Upon the sponsor's request, the director shall convene a hearing in accordance with section 12-30-10.
- (6) In each case in which deregistration is ordered, the director shall notify the sponsor.
- (7) Every order of deregistration shall contain a provision that the department shall, within fifteen workdays of the effective date of the order, notify all registered apprentices of the deregistration of the program, the effective date, and that such action automatically deprives the apprentices of their individual registration. [Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §372-5)

§12-30-10 Hearings. (a) All hearings required by this chapter shall be held in accordance with chapter 91, HRS.

(b) The director or an authorized representative shall have the responsibility of giving notice of hearings and conducting and regulating the course of the hearings. Every party shall have the right to counsel and a fair opportunity to present the party's case, including such cross-examination as may be appropriate under the circumstances. The director or an authorized representative shall make every reasonable effort to obtain all pertinent facts and shall render a final decision based on the findings.

(c) Any person aggrieved by the final decision of the department shall be entitled to judicial review as provided by section 14 of chapter 91, HRS. (Eff. 7/30/81) (Auth: HRS §372-5) (Imp: HRS §372-5)

§12-30-11 Reinstatement of program registration. Any apprenticeship program deregistered pursuant to chapter 372, HRS, and this chapter, may be reinstated upon presentation of adequate

evidence that the apprenticeship program will be operated in accordance with chapter 372, HRS, and this chapter. [Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §372-5)

§12-30-12 Complaints. (a) Any complaint concerning discrimination or other equal opportunity matters shall be submitted, processed, and resolved in accordance with state or federal equal employment opportunity laws.

(b) Any controversy or difference arising under an apprenticeship agreement which cannot be resolved by the parties, or which is not covered by a collective bargaining agreement, may be submitted to the department for review. Matters covered by a collective bargaining agreement are not subject to such review. [Eff. 7/30/81] (Auth: HRS §372-5) (Imp: HRS §372-5)