

July 3, 2017
REQUEST FOR PUBLIC COMMENT:
DRAFT Apprenticeships Report

As directed by legislation (HB 16-1287), the Colorado Department of Labor and Employment (CDLE) is requesting public comment on the following draft report on policies and rules which reviews policies, rules and regulations “within the department that may impact the establishment or integration of pre-apprenticeships and apprenticeships into Colorado businesses...”

In summary, we reviewed the policies/rules of those divisions within CDLE which might impact employers and employees contemplating participation in apprenticeship programs. On a positive note, our regulatory divisions have concluded that existing rules/policies should not hinder the establishment of, or participation in, apprenticeship programs in Colorado. However, we have provided suggested discussion points within each of the division sections below to assist you and other interested stakeholders in considering suggestions for administrative or statutory policy changes which might be included in our final report.

We look forward to your thoughts and suggestions, and comments. Those submitted up through 5:00 p.m. on July 18, 2017 will be taken into consideration in drafting our final report, which will then be submitted to the Colorado General Assembly’s House Committee on Business Affairs and Labor and Senate Committee on Business, Labor and Technology. Our final report will also be transmitted to the Colorado Workforce Development Council for inclusion in its 2017 edition of the annual Colorado Talent Report.

Additionally, if you have questions or need additional information or clarification on this process, please contact Patrick Teegarden, CDLE’s Director of Policy and Legislation, either by e-mail (Patrick.teegarden@state.co.us) or by phone (303-318-8019). In advance, we appreciate your willingness to review this document and share with us your thoughts on improving the integration of apprenticeships and other alternative training programs in Colorado.

Background: Working Definitions/Terminology on Apprenticeships, Pre-Apprenticeships, and Registered Apprenticeships:

Apprenticeships: An employer-driven model and form of experiential learning that combines on-the-job learning as a paid employee with related classroom instruction in order to increase an apprentice’s skill level and wages.

Pre-Apprenticeships: Services and programs, often including classroom instruction, designed to prepare individuals to enter and succeed in Registered Apprenticeship programs. These programs should have a documented partnership with at least one Registered Apprenticeship program sponsor and together, they expand the participant's career pathway opportunities with industry-based training coupled with classroom instruction. (For more information see - <http://www.doleta.gov/OA/preapprentice.cfm>).

Registered Apprenticeships: An employer-driven model that combines on-the-job learning with related classroom instruction that increases an apprentice’s skill level and wages and is registered/approved with the US Department of Labor.

Youth Apprenticeships: Apprenticeships for 11th-12th grade students enrolled in a traditional K-12 environment

Part I

Assessment of Impact of Division Rules on Apprentice Program [Ref: HB1287]

Division of Workers’ Compensation

Based on review of the federal guidelines for internship programs, DOWC envisions no negative impact with regard to the division’s administrative rules. Discussion points follow:

- Central issue: definition of the employee-employer relationship since division rules primarily address the process once that relationship has been established.
- Division relies upon federal definitions (none created by division) e.g. apprentice
- An apprentice will be deemed an employee, and workers’ comp coverage will be required.
- Occupations which are traditionally filled via apprenticeships fall into the higher risk categories
- Altering coverage requirements presents the possibility of exposing apprentices to uninsured risk

Division of Unemployment Insurance

UI does not have any rules that would hinder or deter the integration of alternative training programs. Discussion points follow:

- Will an individual, who is in an apprenticeship program, be required to register for work with the workforce center?
- Because working less than 32 hours is considered “a week of unemployment,” do apprenticeship program hours need to be reported?
- An individual must be ready and willing to accept suitable work at any time it may be offered; therefore, as with other approved training programs will the individual in the apprenticeship program be considered available as long as he or she is available to attend training?
- Will the “actively seeking work requirement” be waived as with other approved training programs?
- Because individuals are required to report any income received in exchange for services performed, must someone in an apprenticeship program report income received while in the program?
- Is the employer liable to pay UI premiums on money paid to the individual in the training program?

Division of Labor Standards and Statistics

DLSS does not recommend any changes to existing employment laws to facilitate establishment of Colorado’s new apprenticeship program.

- C.R.S. § 8-15-101 requires CDLE—specifically DLSS—“to review employer and employee requirements, services, processes, benefits, and other regulations within the department that may impact the establishment or integration of pre-apprenticeships and apprenticeships into Colorado businesses.” Results of review will go to various legislative committees, and State Workforce Council for inclusion in the annual Colorado Talent Report.

Division of Vocational Rehabilitation

After reviewing DVR's rules related to House Bill 16-1287 for the Apprenticeship program, DVR's existing rules are not impacted by this legislation.

Division of Oil and Public Safety

OPS rules should not impact the implementation of the new apprenticeship program.

Part II

Summary Observations/Key Policy Considerations

Three primary program areas within CDLE will merit continued attention and ongoing policy analysis as apprenticeship programs expand in Colorado: Unemployment Insurance (UI), Workers' Compensation (WC), and Colorado's general wage and hour laws as well. Because apprenticeships are designed to train workers to eventually become permanent employees, CDLE believes that apprentices/trainees must be considered employees under applicable Colorado statutes. However, for UI purposes, consideration must be given to number of hours and duration of training programs prior to the time an employer must begin paying UI premiums on behalf of the "permanent employee." Likewise, because all businesses must provide WC coverage in case any of their employees are injured on the job, such requirements will presumably necessarily apply to apprentices/trainees as well. Finally with respect to wage and hour laws, in addition to minimum wage requirement, consider the following document on YOUTH employment, which provides guidance on applicable state requirements—given that so many apprenticeship/training programs are targeted toward young people initially entering the workforce, these are also important to keep in mind:

Colorado Youth Law

<https://www.colorado.gov/pacific/sites/default/files/Youth%20Law%20Fact%20Sheet%20August%202016.pdf>

The Colorado Youth Employment Opportunity Act (C.R.S. 8-12-101 *et seq.*) regulates the employment of minors in Colorado. The Fair Labor Standards Act (FLSA) and its regulations do not permit the employment of minors in a variety of circumstances. When both federal and state laws apply, the more stringent standard must be observed. Contact the U.S. DOL for information on FLSA and federal youth laws (www.dol.gov or 1-866-4USWAGE).

1. Operation of any high-pressure steam boiler or high temperature water boiler.
2. Work which primarily involves the risk of falling from any elevated place located ten feet or more above the ground except that work defined as agricultural involving elevations of twenty feet or less above ground.
3. Manufacturing, transporting, or storing of explosives.
4. Mining, logging, oil drilling, or quarrying.
5. Any occupation involving exposure to radioactive substances or ionizing radiation.
6. Operation of power-driven machinery:

- a) Woodworking machines
- b) Metal-forming machines
- c) Punching or shearing machines
- d) Bakery machines
- e) Paper products machines
- f) Shears
- g) Automatic pin-setting machines
- h) Power food slicers and grinders

- 7. Any other power-driven machinery deemed hazardous by the Director.
- 8. Slaughter of livestock and rendering and packaging of meat.
- 9. Occupations directly involved in the manufacture of brick or other clay construction products, or silica refractory products.
- 10. Wrecking or demolition, but not including manual auto wrecking.
- 11. Roofing.
- 12. Occupations in excavation operations.

HAZARDOUS / PROHIBITED (8-12-110)

General Restrictions

No employer shall be permitted to work a minor more than forty hours in a week or more than eight hours in any twenty-four-hour period.

School Day Restrictions

On school days, during school hours, no minor under the age of sixteen shall be permitted employment except as provided by a school release permit. After school hours no minor under the age of sixteen shall be permitted to work in excess of six hours unless the next day is not a school day.

Nighttime Restrictions

Except for babysitters, no minor under the age of sixteen shall be permitted to work between the hours of nine-thirty p.m. and five a.m., unless the next day is not a school day. An exception to this rule is a minor employed as an actor, model, or performer.

WORK HOUR RESTRICTIONS (8-12-105)

A minor is any person under the age of 18, except a person who has received a high school diploma or a passing score on the general educational development (GED) examination.

DEFINITION OF A MINOR (8-12-103(5))

The CYEOA does not generally apply to the following:

- 1. Schoolwork and supervised educational activities.
- 2. Home chores.

3. Work done for a parent or guardian, except where the parent or guardian receives any payment therefore.
4. Newsboys and newspaper carriers.
5. Actors, models, and performers are exempt from the age-related restrictions for minors under age fourteen.

EXEMPTIONS FROM CYEOA (8-12-104)

Minors under the age of 9 cannot generally be employed.

Permissible at age 9 or older:

1. Delivery of handbills and advertising.
2. Shoe shining.
3. Gardening and care of lawns involving no power-driven lawn equipment.
4. Cleaning of walks involving no power-driven snow-removal equipment.
5. Casual work usual to the home of the employer and not specifically prohibited.
6. Caddying on golf courses.
7. Occupations similar to the above.

Permissible at age 12 or older:

1. Sale and delivery of periodicals.
2. Door-to-door selling and delivery of merchandise.
3. Baby-sitting.
4. Gardening and care of lawns, and cleaning of walks; contact the Division regarding use of power-driven equipment.
5. Non-hazardous agricultural work.
6. Occupations similar to the above.

Permissible at age 14 or older:

1. Non-hazardous occupations in manufacturing.
2. Public messenger service and errands by foot, bicycle and public transportation.
3. Operation of automatic enclosed freight and passenger elevators.
4. Janitorial and custodial service.
5. Office work and clerical work.
6. Warehousing and storage, including unloading and loading of vehicles.
7. Non-hazardous construction and non-hazardous repair work.
8. Occupations in retail food service.
9. Certain gasoline service occupations.
10. Occupations in retail stores.
11. Occupations in restaurants, hotels, motels, or other public accommodations.
12. Occupations related to parks or recreation.
13. Occupations similar to the above.

Permissible at age 16 or older:

The occupations listed above and the operation of a motor vehicle if the minor is licensed to operate the motor vehicle for such use pursuant to Colorado Revised Statutes Article 2, Title 42.

PERMISSIBLE OCCUPATIONS (8-12-106, 107, 108, 109)

- The Director may grant exemptions from some provisions of the CYEOA.
- Any employer, minor, minor's parents or guardian, school official, or youth employment specialist may request an exemption.
- Exemptions are evaluated on a case-by-case basis, and are granted or denied in accordance with the best interests of the minor.
- Exemption determinations involve the scrutiny of such factors as the minor's previous training and safety concerns.

**REQUEST AN EXEMPTION
(8-12-104)**

Work permits are **not** required by Colorado law.

Age Certificates

Any employer desiring proof of the age of any minor employee or prospective employee may require the minor to submit an age certificate. Age certificates are issued by or under the authority of the school superintendent of the district or county in which the applicant resides.

School Release Permits

Any minor fourteen or fifteen years of age who wishes to work on school days during school hours shall first secure a school release permit. Such permit is issued only by the school district superintendent, his agent, or some other person designated by the board of education.

**WORK PERMITS
(8-12-111)**

This complimentary guide is provided by the Colorado Division of Labor Standards and Statistics. Its condensed and simplified content is for general informational purposes only, and does not constitute legal advice. For more information, contact the Division, an attorney, or an HR professional.

Guide Revised August 2016