

**Handout Summary**  
**Workforce Board Meeting**  
**September 11, 2019**

**From the Department of Labor and Industries (L&I):**

- Letter dated August 26, 2019 requesting the USDOL withdrawal proposed rule changes under the National Apprenticeship Act.
- Draft Document providing clarification on how Washington Labor laws and rules apply to students participating in Career Connect Washington activities.

**Perkins State Approval Letter:** Letter dated July 1, 2019 from the USDOE notifying the Board that their FY2019 State Perkins Plan has been approved.





STATE OF WASHINGTON

## DEPARTMENT OF LABOR AND INDUSTRIES

PO Box 44000 • Olympia Washington 98504-4000

August 26, 2019

Adele Gagliardi, Administrator  
Office of Policy Development & Research  
U.S. Department of Labor  
200 Constitution Avenue NW, Room N-5641  
Washington, DC 20210

Re: **RIN 1205-AB85**

Dear Ms. Gagliardi:

On behalf of the State of Washington, I write to express our serious concerns with the U.S. Department of Labor's (DOL) proposed rule establishing a separate and unequal designation for industry programs as apprenticeships under the National Apprenticeship Act (*Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations*). Since the enactment of the National Apprenticeship Act more than 82 years ago, millions of people have benefitted from the registered apprenticeship system established by the Act as a gateway into family-wage jobs. As the administrator of Washington State's registered apprenticeship system, we support expansion of registered apprenticeship and rigorous, high-quality training. However, we cannot support DOL's proposal to create industry-recognized apprenticeship programs (IRAPs) that lack the rigorous standards necessary to safeguard the welfare of apprentices and erode the value of registered apprenticeship credentials. We urge that the proposed rule be withdrawn.

In the National Apprenticeship Act, Congress directed DOL to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices. 29 U.S.C. 50 (1937). Labor standards establishing wages, hours, and working conditions prevent exploitation of workers who are in an unequal position with respect to bargaining power. *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

To carry out Congressional intent, DOL has always relied on the "three-legged stool" for labor standards of apprenticeship, including at least 144 hours of classroom instruction, an enforceable written agreement between the apprentice and the training agent, and a neutral, third party available to resolve disputes as they arise and to ensure the apprentice is not exploited during the process. See "*To Safeguard the Welfare of Apprentices*", *Hearings before a subcommittee of the Committee on Labor, House of Representatives, Seventy-fifth Congress (1937)*.

The Trump Administration's proposed rule fails to provide adequate standards for on-the-job and classroom training, wages, hours, working conditions, equal access, and due process. While the



proposed rule includes some of the key elements of apprenticeship, it lacks the comprehensive structure needed to ensure worker protection and quality outcomes. For example, there are no requirements for hours or competencies for training, no guarantee of structured wage progression, and no specific requirements that programs ensure opportunities for women, veterans, people with disabilities, and underrepresented groups.

Unlike registered apprenticeship programs where federal or state recognition and oversight is required, the proposed rule outsources DOL responsibilities by creating private Standards Recognition Entities (SRE) that may recognize industry programs, without further DOL involvement and outside any state involvement. Putting aside concerns related to DOL's authority to delegate these responsibilities, the outsourcing as proposed fails to protect workers from the risk of exploitation resulting from poor quality training, instruction, poor outcomes, and lack of connection to jobs.

In addition, establishing a parallel program has the potential to create a false equivalency for both participants and employers. A parallel model with less comprehensive standards but with the same name will confuse both participants and the employers who may want to hire them. Participants may believe they are training for the recognized, transferable credentials that registered apprenticeship guarantees. Employers may believe a participant has more rigorous training than this proposed rule would permit an industry-recognized credential to provide. **This confusion will cause damage to the integrity of the registered apprenticeship system and erode the value of the apprenticeship credential overall.**

Washington and other states have developed registered apprenticeship programs in information technology, health care, and advanced manufacturing. Utilizing the existing registered apprenticeship model in emerging sectors has meant participants know they will receive a valuable credential and employers know they are hiring supervised, trained, and qualified workers. These experiences show that quality need not be sacrificed in the interest of scale. Implementation of an IRAP model creates serious concerns that efforts will be duplicated and confusion will result as separate types of apprenticeship programs are created for the same industries or occupations. We fear students may limit themselves to less rigorous programs and employers may not understand the difference in the skills acquired.

Nationwide, registered apprenticeship has substantial economic benefits. Registered programs provide workers with hands-on, quality training and work experience to make them competitive in the labor market over time. A 2012 study of Registered Apprenticeships in 10 States found that individuals who completed their training earned an average of \$240,037 more over their lifetime than nonparticipants. Businesses benefit from a pipeline of skilled workers, increased productivity, and loyalty when they participate in registered apprenticeship. Similarly, for each dollar invested in apprenticeship by Government, apprentices pay an average \$20.60 in state & federal income taxes.<sup>1</sup>

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We urge DOL to reconsider its rulemaking, and appreciate your consideration of our concerns. If you have any questions, please contact the Director of Governor Inslee's Washington, D.C. office, Casey Katims, at [Casey.Katims@gov.wa.gov](mailto:Casey.Katims@gov.wa.gov). Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Joel Sacks".

Joel Sacks  
Director

cc: Casey Katims, Director of Governor Inslee's Washington, D.C. Office



## I. Career Connected Learning-when is it "employment"?

When work is employment, the employer must pay the employee. Whether or not career connected learning experiences are employment depends upon the facts of the arrangement between youth, the educational provider, and the work experience provider. For purposes of employment standards, workers' compensation, and safety laws administered by L&I, "youth" are defined as people under 18.

For purposes of Career Connect Washington, work experiences are organized into three categories:

- **Career awareness and exploration** means programs, activities, and events that provide early exposure to jobs and industries and are structured programs that include job fairs, guest speakers, job shadows, jobsite tours and other similar activities.
- **Career preparation programs** means programs that give students hands-on skills and knowledge experience within a particular business, career track, or industry, and help prepare students to work in a professional setting. "Career preparation programs" include career and technical education courses, on-site internships, preapprenticeship programs, and other similar opportunities.
- **Career launch programs** means registered apprenticeships and programs that combine
  - (i) supervised paid work experience
  - (ii) aligned classroom learning to academic and employer standards; and
  - (iii) culmination in a valuable credential beyond a high school diploma or forty-five college credits towards a two-year or four-year post-secondary credential.

**Career awareness and exploration are generally not employment because these arrangements have a primary benefit to the student and do not provide an economic benefit to the provider.**

When career awareness and exploration programs are school-based and are part of the school's educational program, they are not employment because students are not required to perform tasks that provide an economic benefit to an employer.

- **Job fairs** provide students with information about particular careers but do not require the students to perform tasks for an employer's benefit.
- **Guest speakers** typically come to a class and showcase their industry or worksite. They provide information to students but do not require students to perform tasks for an employer's benefit.
- **Job shadows** permit a student to follow an employee to learn about a particular occupation or industry to learn about an occupation or industry. As long as shadows are time-limited and closely supervised to ensure the student is observing but not performing the work, these would not be considered employment.
- **Jobsite tours** permit a student to observe activities in-person to learn about how work is performed at a particular workplace.

These programs share certain characteristics-they are intended to provide information to students about careers and workplaces without providing hands-on experiences. The primary beneficiary of these

programs are the students; the providers of these experiences do not derive an economic benefit from the presence of the students and, accordingly, are not employment.

**Career preparation programs may be employment if the work experience provider derives the primary economic benefit from the experience. To avoid an employer-employee relationship, the educational function of the experience must be determined in advance and followed by the work experience provider.**

Career preparation experiences provide students with hands-on skills and experiences to prepare students to work in a professional setting. In order to avoid violations of employment laws, providers of these experiences should align the workplace experience with the student's educational program.

- **Career and technical education courses** including instructional worksite learning and cooperative worksite learning, where a student performs tasks to acquire skills or practices skills acquired in the classroom, may be employment if the student is not the primary beneficiary of the learning experience. Whether the student is the primary beneficiary is determined on a case-by-case basis. These learning experiences should:
  - Include a written learning plan created in advance of the experience
  - Address expectations that the work experience is unpaid, with start and end dates set before the experience begins
  - Align the worksite learning plan with the student's coursework

If the worksite learning provides more of an economic benefit to the employer than to the student, it may be employment; but employers may be able to obtain subminimum wage certificates that permit a reduced wage for a limited training period in limited circumstances.

- **On-site internships** are work-related learning for individuals who want hands-on experience. Under certain conditions, interns may perform unpaid work. The test for determining whether an intern is an employee depends on who benefits from the work completed. The United States Department of Labor provides guidance under federal law. Federal standards examine the primary beneficiary of the work completed.

Evidence of primary beneficiary status includes:

- A time-limited arrangement coordinated with the student's academic calendar
- No expectation of a job at the end of the placement
- A written training plan with educational focus
- A showing that no employees are displaced by the arrangement

Employers should also consult state Administrative Policy ES.C.2, Hours Worked for additional guidance on state law. Due to changes in federal law, this policy is under review.

**Preapprenticeship, or apprenticeship preparation programs** are classroom-based programs with some hands-on elements. They teach ancillary skills necessary for a student to be successful in a registered apprenticeship program; the primary beneficiary is the student who may ultimately meet the requirements to enter the apprenticeship. Some are recognized by the Washington State Apprenticeship

and Training Council. Because the student is the primary beneficiary, these programs do not have to be paid-although some are.

**Workers' compensation insurance** is available for student volunteers enrolled in school programs, and for unpaid student interns. Safety training must be provided to students at the worksite for career preparation experiences. Workers' Compensation for Student Volunteers explains the requirements.

**Career launch programs include registered apprenticeships and are considered to be employment.**

Registered apprenticeships and other programs that have supervised, paid work experience; aligned classroom learning, and a valuable credential at the end are defined as career launch programs. Registered apprenticeships are approved by the Washington State Apprenticeship and Training Council and must meet rigorous standards for approval. Apprentices earn a percentage of journeyworker wages while they are training and are covered by workers' compensation. These programs are considered employment and must be paid.

## **II. Limits for Students Aged 16 & 17**

**A. Hazardous Work:** Federal and state law prohibit youth from doing certain kinds of work. State law restricts certain kinds of work, but certain exemptions are available for students in career preparation and career launch programs including hazardous work, provided that:

- The student is enrolled in a paid worksite learning program or registered apprenticeship, or other formal program
- There is a written agreement between the student, parents, school, and employment provider outlining the learning program and job tasks
- The written learning program includes a schedule of organized and progressive work processes the student will perform
- The hazardous tasks are an incidental part of the learning plan and performed for short periods of time and under close supervision by a qualified and experienced person
- Both the school and the employment provider give safety instructions to the student

For students younger than 16, the rules differ; check with L&I for details.

### **B. Hours of Work:**

Students aged 16 & 17 enrolled in paid worksite learning or apprenticeship may work more than 20 hours a week or during school hours. Otherwise students are limited to 20 hours a week not during school hours. For students younger than 16, the rules differ; check with L&I for details.

### **C. Wages, Meals, and Rest Periods**

Students aged 16 & 17 must be paid the minimum wage for employment. Apprentices are paid a percentage of the journeyworker wage for their trade or occupation. Students must be provided with an uninterrupted meal break of at least 30 minutes if they work more than 5 hours in a day. They also are entitled to at least a 10-minute paid rest break for each 4 hours worked. They must be allowed a rest period no later than the end of the third hour of the shift.

#### **D. Minor Work Permits**

Employers participating in career launch programs need to obtain minor work permits for the students who work for them.

#### **III. Penalties**

Unpaid students who do work that provides an economic benefit to the employer may be entitled to file a complaint for unpaid wages, which must be investigated. Whether or not work experiences are actually paid employment depends on the factual circumstances. The employer may owe unpaid wages and a civil penalty. Employers who permit minors to do prohibited work may be cited for child labor violations and civil penalties.

#### **IV. WIOA-Subsidized Programs**

When a minor youth is participating in a WIOA-subsidized work experience as part of career exploration or preparation, the work experience provider must still provide required safety training. If an employer/employee relationship exists, labor standards apply.

Draft



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF CAREER, TECHNICAL, AND ADULT EDUCATION

JUL - 1 2019

Ms. Eleni Papadakis  
Executive Director  
Workforce Training & Education Coordinating Board  
P.O. Box 43105  
Olympia, Washington 98504

Dear Ms. Papadakis:

I am pleased to notify you that our office has approved your Fiscal Year (FY) 2019 State Plan, submitted pursuant to the *Strengthening Career and Technical Education for the 21<sup>st</sup> Century Act* (Public Law 115-224) (Perkins V, the Act, or statute). Your State will receive the first installment of your Perkins V basic grant (Title I) on July 1, 2019.

However, please note that our approval of State Plan is conditioned upon your completion of the revisions identified in the Perkins State Plan Portal, if any. These revisions are mandatory and are due by **July 31, 2019**. We will keep the portal open for final uploading of plan revisions until July 31, 2019, after which time, we will publicly post the new Perkins V State Plans on the Perkins Collaborative Resource Network (PCRN) at <https://cte.ed.gov/profiles/national-summary>.

Please note that you may access your electronically signed Grant Award Notification (GAN) documents at <http://www.g5.gov> under the Grant Maintenance/Award Documents menu selection. If you have questions regarding accessing G5 or your GAN documents, please contact the G5 help desk at 888-336-8930.

The second installment, or remainder, of your State's Title I grant will become available on October 1, 2019, subject to our office's receipt and approval of your State's revisions noted above. At that time, this office will add funds as a supplement to your grant award.

We look forward to working with you over the coming year as you continue to "Rethink CTE" in your State and implement bold actions to improve the academic and technical skills of students in your State.

Sincerely,

A handwritten signature in blue ink that reads "Sharon Lee Miller".

Sharon Lee Miller  
Director  
Division of Academic and Technical Education

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202

[www.ed.gov](http://www.ed.gov)

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We urge DOL to reconsider its rulemaking, and appreciate your consideration of our concerns. If you have any questions, please contact the Director of Governor Inslee's Washington, D.C. office, Casey Katims, at [Casey.Katims@gov.wa.gov](mailto:Casey.Katims@gov.wa.gov). Thank you.

Sincerely,

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Joel Sacks  
Director

cc: Casey Katims, Director of Governor Inslee's Washington, D.C. Office



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We look forward to working with you over the coming year as you continue to "Rethink CTE" in your State and implement bold actions to improve the academic and technical skills of students in your State.

Sincerely,

A handwritten signature in blue ink that reads "Sharon Lee Miller".

Sharon Lee Miller  
Director  
Division of Academic and Technical Education

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202

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