

LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WAGE AND HOUR COMPLIANCE

Public Works Contractor Registration

Amendments: N.J.A.C. 12:62-1.2 and 2.1

Authorized By: _____

Robert Asaro-Angelo, Commissioner

Department of Labor and Workforce Development

Authority: N.J.S.A. 34:11-56.57.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2019 - _____

A public hearing on the proposed new rules will be held on the following date at the following location:

Tuesday, July 2, 2019

10:00 A.M. to 12:00 Noon

New Jersey Department of Labor and Workforce Development

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 777-2960 if you wish to be included on the list of speakers.

Submit written comments by August 2, 2019 to:

David Fish, Executive Director

Legal and Regulatory Services

NJ Department of Labor and Workforce Development

P.O. Box 110 – 13th Floor

Trenton, New Jersey 08625-0110

david.fish@dol.nj.gov

The agency proposal follows:

Summary

The Department is proposing amendments to N.J.A.C. 12:62-1.2 and 2.1 in order to implement P.L. 2019, c. 21 (the Act), which requires that as a condition to becoming registered with the Department of Labor and Workforce Development (Department) as a public works contractor under N.J.S.A. 34:11-56.48 et seq., the contractor must provide to the Commissioner on a certification form provided by the Commissioner, with documentation satisfactory to the Commissioner, that the contractor has all valid and effective licenses, registrations or certificates required by State law, including registrations or certifications required to do business in New Jersey, and that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program for each craft that the contractor employs.

Proposed amendments to N.J.A.C. 12:62-1.2, which contains definitions of words and terms used throughout the chapter, would add new definitions for the following terms: “Craft,” “Craftworker,” “ERISA-covered apprenticeship training program trust fund,” “Registered apprenticeship program,” “Sponsor,” and “Sponsorship.” The proposed definition for the term, “craft,” would indicate that the term means a construction trade or craft that is utilized by the contractor directly on a public work and

that is included on the United States Department of Labor's "List of Occupations Officially Recognized as Apprenticeable by the Office of Apprenticeship." The proposed definition for the term, "craftworker," would indicate that the term means an individual employed by a contractor or subcontractor in a craft. The proposed definition for the term, "ERISA-covered apprenticeship training program trust fund," would indicate that the term means an "employee welfare benefit plan," as that term is defined within the Employee Retirement Income Security Act of 1974 (ERISA), that is subject to the requirements for such a plan under ERISA, and that is a fund established and maintained for the sole purpose of financing a registered apprenticeship program. The proposed definition for the term, "registered apprenticeship program," is taken verbatim from the Act and would indicate that the term means an apprenticeship program which is registered with and approved by the United States Department of Labor (USDOL), which provides each trainee with combined classroom and on-the-job training in an occupation recognized as an apprenticeable occupation, and which meets the program standards of enrollment and graduation under 29 C.F.R. §29.6. The proposed definition for the term "sponsor," would be taken verbatim from 29 C.F.R. §29.2, and would indicate that the term means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved. The proposed definition for the term "sponsorship" would indicate that the term means the position of being a sponsor. In addition, the Act amends the definition of the term "worker," within N.J.S.A. 34:11-56.50, so as to add the phrase, "who have completed or are actively participating in a registered apprenticeship program," following the phrase, "includes laborer, mechanic, skilled or semi-skilled

laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work.” The Department is proposing to amend the existing regulatory definition for the term “worker” so as to ensure consistency with the statute.

Proposed amendments to N.J.A.C. 12:62-2.1 would state that the Application for Public Works Contractor Registration must contain a certification by the applicant to the truthfulness and accuracy of all statements made and documents submitted in connection with the application. The amendments would also add to the list of information at N.J.A.C. 12:62-2.1(c) that a contractor must submit to the Department for review with the Application for Public Works Contractor Registration the following: (1) a statement that the contractor possesses all valid and effective licenses, registrations or certificates required by State law, including registrations or certifications required to do business in New Jersey, (2) a statement that the contractor is in possession of documentation, which will be made available to the Department upon request, that the contractor possesses all valid and effective licenses, registrations or certificates required by State law, including registrations or certifications required to do business in New Jersey, (3) a statement that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program for each craft that it employs, and (4) a statement that the contractor is in possession of documentation, which will be made available to the Department upon request, establishing that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program for each craft that it employs. In addition, the amendments would indicate that a contractor

is considered to be participating in a registered apprenticeship program under the following circumstances:

1. The contractor is signatory to a collective bargaining agreement through which the contractor has access to a registered apprenticeship program that is sponsored by the labor union, or agrees to joint sponsorship with the labor union of a registered apprenticeship program; provided that the collective bargaining agreement also requires ongoing employer contributions into an ERISA-covered apprenticeship training program trust fund,

2. The contractor is signatory to an agreement with a workforce intermediary, such as an industry association, consortium of businesses, community-based organization, or educational institution, through which the contractor has access to a registered apprenticeship program sponsored by the workforce intermediary, or agrees to joint sponsorship with the workforce intermediary of a registered apprenticeship program; provided that the agreement between the contractor and the workforce intermediary also requires ongoing employer contributions into an ERISA-covered apprenticeship training program trust fund;

3. The contractor is the sponsor of a registered apprenticeship program;

4. The contractor currently employs at least one apprentice who is registered with the USDOL within a registered apprenticeship program; provided that as of the date of the contractor's submission to the Department of the Application for Public Works Contractor Registration, the apprentice has completed at least 1000 hours of on-the-job learning with the contractor; or

5. During the one-year period immediately preceding submission to the Department of the Application for Public Works Contractor Registration, the contractor employed at least one apprentice who was registered with the USDOL within a registered apprenticeship program; provided that the apprentice had completed at least 1000 hours of on-the-job learning with the contractor.

The proposed amendments would also indicate that for a limited one-year period following the effective date of the law (from May 1, 2019 to April 30, 2020), a contractor submitting an Application for Public Works Contractor Registration to the Department may satisfy the requirement that the contractor participates in a registered apprenticeship program for each craft that the contractor employs by certifying and possessing documentation to establish that the contractor has applied to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs; or that a labor union with which the contractor is signatory to a collective bargaining agreement has applied to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs; or that an industry association or consortium of businesses of which the contractor is a member in good standing has applied to the USDOL, for approval of a registered apprenticeship program for each craft that the contractor employs. Finally, for informational purposes, the proposed amendments would reference 29 C.F.R. §29.6 and restate its contents; specifically, that every registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time, which may not exceed 1 year: (1) between the date when a program is registered and the date of

registration for its first apprentice(s); or (2) between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

As the Department has provided a 60-day comment period for this notice of proposal, the notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The requirement that as a condition to registration with the Department as a public works contractor, the contractor must first certify to the Department that the contractor (1) has all valid and effective licenses, registrations or certificates required by State law, and (2), if directly employing craftworkers, participates in a registered apprenticeship program, derives directly from the Act. Consequently, the social impact of the new requirement may be attributed as much, if not more, to the Act than to the proposed amendments to N.J.A.C. 12:62, which are the subject of this rulemaking. That said, requiring as a condition to public works contractor registration that contractors have all valid licenses required by State law and participate in a registered apprenticeship program, will assist the Department in its effort to ensure that only responsible employers who adhere to New Jersey law and who value and are contributing on an ongoing basis to the development in this State of a highly-trained and highly-skilled workforce, are benefiting from taxpayer supported public works construction contracts. As to the beneficial social impact of registered apprenticeships, generally, the enhanced level of orientation and training that comes with registered apprenticeship programs inures, of course, to the benefit of the individuals receiving that training, but also to their employers, co-workers and to the general public, in that registered apprenticeship programs promote a culture of workplace safety that saves both lives and money. Registered apprenticeship programs are an

important tool for developing a skilled workforce. Access to that skilled workforce benefits the State's employers and is critical for New Jersey's social and economic future.

Economic Impact

Both the Act and, consequently, the proposed amendments to N.J.A.C. 12:62, expressly require that as a condition to being registered as a public works contractor, the applicant must establish its participation in a registered apprenticeship program for each craft that it employs. This would presumably result in an increase in the number of registered apprenticeship programs in the State. The economic benefit of apprenticeship programs for both workers and employers is well established. USDOL materials indicate that “[a]pprentices earn competitive wages, a paycheck from the first day of employment and incremental raises as skill levels increase,” adding, “the average wage for a fully-proficient worker who completes an apprenticeship is \$50,000 annually [and] apprentices who complete their program earn approximately \$300,000 more during their career than non-apprenticeship workers” (See: USDOL Apprenticeship Toolkit: Frequent Asked Questions at <https://www.dol.gov/apprenticeship/toolkit/toolkitfaq.htm>). Those USDOL materials also note that with apprenticeship, workers obtain a nationally-recognized, portable credential; receive hands-on training resulting in improved skills and competencies as well as the potential to earn college credit toward an associate's or bachelor's degree; and that once the apprenticeship is complete, workers are on their way to a successful long-term career with a competitive salary and little or no educational debt. As to the economic benefit to employers, the same USDOL materials state that “apprenticeship helps businesses develop highly-skilled employees,” adding, “[a]pprenticeship programs also reduce turnover rates, increase productivity and lower the cost of recruitment.” The Department grants that for those public works contractors

who are not already participating in a registered apprenticeship program, there will be additional costs associated with compliance; which is to say, it will likely cost those contractors money to either develop, obtain approval for and administer their own registered apprenticeship program(s); or contribute financially in the manner described in the proposed rules to a registered apprenticeship program(s) sponsored by a labor union or workforce intermediary or jointly by the contractor and a labor union or a workforce intermediary. However, it is the Department's belief, and presumably the Legislature's as well, that the immediate and long term economic benefits to individual contractors, workers and the State as a whole, of an increase in registered apprenticeship programs throughout the State will outweigh any individual costs.

Regarding the requirement within both the Act and the proposed amendments that as a condition to registration as a public works contractor, a contractor must certify to the Department, with documentation satisfactory to the Commissioner, that the contractor "has all valid and effective licenses, registrations or certificates required by State law," there should be no negative economic impact to public works contractors in that, presumably, each contractor already possesses "all valid and effective licenses...required by State law." Simply certifying to that fact as part of the public works contractor registration application should result in no additional cost to the contractor. As to contractors who do not possess all valid and effective licenses and who would be required to obtain those licenses in order to provide a truthful certification on the public works contractor registration, the cost associated with obtaining the license(s) would result in the first instance from the licensure requirement itself, not the public works contractor registration requirement. That is, if the contractor does not possess all valid

and effective licenses required by the State to engage in his business, he is presumably prohibited by law from engaging in that business, regardless of whether he meets the criteria for public works contractor registration.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal standards or requirements. Specifically, the proposed amendments are governed by State law, N.J.S.A. 34:11-56.48 et seq., which requires that contractors register with the Department of Labor and Workforce Development as a condition to performing “public work,” as that term is defined within the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. There are no Federal standards or requirements that impose a registration requirement as a condition to performing “public work,” as that term is defined within the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

Inasmuch as P.L. 2019, c. 21, requires as a condition to registration as a public works contractor that the applicant certify that it is participating in a “registered apprenticeship program,” and then defines that term to mean an apprenticeship program that is registered with and approved by the USDOL under federal regulations, and inasmuch as the proposed amendments reflect that statutory requirement, the proposed amendments have a connection to the federal apprenticeship regulations. However, as indicated above, the subject of the amendments is public works contractor registration, not apprenticeship; which is to say, the Department will not be enforcing any apprenticeship standards, state or federal, as a result of the proposed amendments, but rather, pursuant to P.L. 2019, c. 21, will simply be confirming as part of the application

evaluation process that the contractor who is applying for public works contractor registration is participating in a registered apprenticeship program.

Regarding proposed N.J.A.C. 12:62-2.1(j), which makes express reference to and restates the substance of 29 C.F.R. 29.6, as explained in the summary above, this is purely an informational sub-section. That is to say, the Department is simply relaying to the regulated community that under that particular federal regulation, which is enforced by the USDOL, a registered apprenticeship program must have at least one registered apprentice except for the following periods of time, which may not exceed one year: between the date when a program is registered and the date for its first apprentice; and between the date that a program graduates an apprentice and the date of registration for the next apprentice in the program. Because one of the most frequently voiced concerns during the pre-proposal process was that a contractor might be required to employ a registered apprentice at all times in order to satisfy the new requirement at P.L. 2019, c. 21, the Department believes that is worth including this informational sub-section so as to reassure the regulated community that even under USDOL's apprenticeship rules, there are certain limited circumstances where the program sponsor would be permitted a lapse in continuous engagement of an apprentice in on-the-job learning without jeopardizing the program's standing with the USDOL. Again, the standard set forth in proposed N.J.A.C. 12:62-2.1(j) is a federal rule enforced exclusively by the USDOL and it is being included within the proposed amendments for purely informational purposes.

Jobs Impact

It is certainly the Department's hope that the Act and the proposed amendments to N.J.A.C. 12:62 that implement the Act, will result in the generation of jobs. That is, with the anticipated increase in registered apprenticeship programs, there should be a corresponding increase in the number of apprenticeship opportunities, which in turn, should result in the generation of jobs; precisely how many jobs is unknown at this time.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments would impose reporting, recordkeeping and compliance requirements on small businesses, as that term is defined within the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, under the Act and the implementing regulatory amendments, all contractors, regardless of size, who wish to register with the Department of Labor and Workforce Development to perform public work would be required to certify to the Department that the contractor (1) has all valid and effective licenses, registrations or certificates required by State law, and (2), if directly employing craftworkers, participates in a registered apprenticeship program for each craft that the contractor employs. The contractor would also be required to retain and make available to the Department for inspection upon request documentation establishing that the contractor (1) has all valid and effective licenses, registrations or certificates required by State law, and (2), if directly employing craftworkers, participates in a registered apprenticeship program for each craft that the contractor employs. It must also be said that although not directly a result of the Act or the implementing regulatory amendments,

a public works contractor who seeks to register with the Department of Labor and Workforce Development and who will, as a result, be required to participate in a registered apprenticeship program for each craft that the contractor employs, will also be required to adhere to the USDOL's reporting, recordkeeping and compliance requirements in order to obtain approval for and maintain approval of its registered apprenticeship program(s). That said, the amendments do contain certain provisions intended to minimize the burden on all affected businesses, including small businesses. Many if not all of those provisions were the result of pre-proposal discussions the Department conducted with groups likely to be impacted by the law. During those discussions, questions focused on the impact of the apprenticeship requirement on contractors who employ both construction and non-construction trades; the existence of apprenticeable and non-apprenticeable occupations; the impact of the apprenticeship requirement on contractors who perform both public and non-public work; the meaning of the phrase "participate in;" and the need to provide a pathway for contractors who decide to create a registered apprenticeship program to move through the federal approval process. In response to these concerns, the Department is proposing definitions for the terms "craft" and "craftworker," that limit application of the Act's registered apprenticeship program requirement to construction trades or crafts that the contractor utilizes directly on public works and that are included on the USDOL's "List of Occupations Officially Recognized as Apprenticeable by the Office of Apprenticeship." Furthermore, the Department has defined "participating in a registered apprenticeship program" in a manner that permits compliance by a given contractor without having at any particular time to actually employ an apprentice(s). That is, the Department recognizes that small contractors in particular may find it overly

burdensome to maintain their own registered apprenticeship program(s) and/or employ an apprentice(s) on a consistent basis. Consequently, under the proposed amendments, such a contractor would have the option of “participating in” a registered apprenticeship program not only by sponsoring its own registered apprenticeship program and employing a registered apprentice(s), but also by either (1) being signatory to a collective bargaining agreement with a labor union that is the sponsor of a registered apprenticeship program, provided that the collective bargaining agreement also establishes an ERISA-covered apprenticeship training program trust fund (for the purpose of financing the registered apprenticeship program) into which the contractor makes ongoing contributions, or (2) being signatory to an agreement with a workforce intermediary, such as an industry association, consortium of businesses, community-based organization, or educational institution, that is the sponsor of a registered apprenticeship program, provided that the agreement between the contractor and the workforce intermediary also establishes an ERISA-covered apprenticeship training program trust fund (for the purpose of financing the registered apprenticeship program) into which the contractor makes ongoing contributions. In addition, the proposed amendments would not require the contractor to submit to the Department as a condition to public works contractor registration documentation of either the contractor’s possession of all valid and effective licenses, registrations or certificates required by State law, or establishing that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program. Rather, under the proposed amendments, it would suffice for the contractor to certify that it is in possession of such documentation and that it will make the documentation available to the Department upon request. Finally, the proposed amendments would state that for

the period from May 1, 2019 (the effective date of the Act) to April 30, 2020, a contractor submitting an Application for Public Works Contractor Registration to the Department would be permitted to satisfy the requirement that the contractor be participating in a registered apprenticeship program by certifying and possessing documentation to establish that the contractor ***has applied*** to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs; or that a labor union with which the contractor is signatory to a collective bargaining agreement, or that an industry association or consortium of businesses of which the contractor is a member in good standing, ***has applied*** to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs. Each of these characteristics of the amendments should ease the administrative burden on covered employers, including small employers.

Housing Affordability Impact Analysis

The proposed amendments would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed amendments pertain only to public works contractor registration. The proposed new rules do not pertain to housing.

Smart Growth Development Impact Analysis

The proposed amendments would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments pertain only to public works contractor registration. The proposed amendments do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated with boldface **thus**; deletions indicated in brackets [thus]):

12:62-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Craft” means a construction trade or craft that is utilized by the contractor directly on a public work and that is included on the USDOL’s “List of Occupations Officially Recognized as Apprenticeable by the Office of Apprenticeship.”

“Craftworker” means an individual employed by a contractor in a craft.

“ERISA-covered apprenticeship training program trust fund” means an “employee welfare benefit plan,” as that term is defined within the Employee Retirement Income Security Act of 1974 (ERISA), that is subject to the requirements for such a plan under ERISA, and that is a fund established and maintained for the sole purpose of financing a registered apprenticeship program.

“Registered apprenticeship program” means an apprenticeship program which is registered with and approved by the USDOL, which provides each trainee with combined classroom and on-the-job training in an occupation recognized as an apprenticeable occupation, and which meets the program standards of enrollment and graduation under 29 C.F.R. §29.6.

“Sponsor” means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

“Sponsorship” means the position of being a sponsor.

“Worker” includes laborer, mechanic, skilled or semi-skilled laborer and apprentices or helpers employed by any contractor or subcontractor and engaged in the performance of services directly upon a public work, **who have completed or are actively participating in a registered apprenticeship program**, regardless of whether their work becomes a component part thereof, but does not include material suppliers or their employees who do not perform services at the job site.

12:62-2.1 Registration required

(a) – (b) (No change.)

(c) As part of its application to the Department, a contractor shall provide all required information and documents requested by the Application for Public Works Contractor Registration **and certify to the truthfulness and accuracy of all statements made and documents submitted in connection with the Application**

for Public Works Contractor Registration. The information to be submitted for review shall include:

1. – 6 (No change.)

7. Proof of workers' compensation insurance; [and]

8. A statement that the contractor possesses all valid and effective licenses, registrations or certificates required by State law, including registrations or certifications required to do business in New Jersey;

9. A statement that the contractor is in possession of documentation, which will be made available to the Department upon request, that the contractor possesses all valid and effective licenses, registrations or certificates required by State law, including registrations or certifications required to do business in New Jersey;

10. A statement that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program for each craft that it employs;

11. A statement that the contractor is in possession of documentation, which will be made available to the Department upon request, establishing that the contractor, if directly employing craftworkers, participates in a registered apprenticeship program for each craft that it employs; and

[8] **12.** Any other relevant and appropriate information from a particular applicant as determined by the Commissioner.

(d) – (g) (No change.)

(h) For the purpose of this section, a contractor is considered to be participating in a registered apprenticeship program if:

1. The contractor is signatory to a collective bargaining agreement through which the contractor has access to a registered apprenticeship program that is sponsored by the labor union, or agrees to joint sponsorship with the labor union of a registered apprenticeship program; provided that the collective bargaining agreement also requires ongoing employer contributions into an ERISA-covered apprenticeship training program trust fund;

2. The contractor is signatory to an agreement with a workforce intermediary, such as an industry association, consortium of businesses, community-based organization, or educational institution, through which the contractor has access to a registered apprenticeship program sponsored by the workforce intermediary, or agrees to joint sponsorship with the workforce intermediary of a registered apprenticeship program; provided that the agreement between the contractor and the workforce intermediary also requires ongoing employer contributions into an ERISA-covered apprenticeship training program trust fund;

3. The contractor is the sponsor of a registered apprenticeship program;

4. The contractor currently employs at least one apprentice who is registered with the United States Department of Labor within a registered apprenticeship program; provided that as of the date of the contractor's

submission to the Department of the Application for Public Works Contractor Registration, the apprentice has completed at least 1000 hours of on-the-job learning with the contractor; or

5. During the one-year period immediately preceding submission to the Department of the Application for Public Works Contractor Registration, the contractor employed at least one apprentice who was registered with the United States Department of Labor within a registered apprenticeship program; provided that the apprentice had completed at least 1000 hours of on-the-job learning with the contractor.

(i) For the period from May 1, 2019 (the effective date of P.L. 2019, c. 21) to April 30, 2020, a contractor submitting an Application for Public Works Contractor Registration to the Department may satisfy the requirements under (c)10 and (c)11 above by certifying and possessing documentation to establish that the contractor has applied to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs; or that a labor union with which the contractor is signatory to a collective bargaining agreement has applied to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs; or that an industry association or consortium of businesses of which the contractor is a member in good standing has applied to the USDOL, for approval of a registered apprenticeship program for each craft that the contractor employs.

(j) Pursuant to 29 C.F.R. 29.6, every registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time, which may not exceed 1 year:

1. Between the date when a program is registered and the date of registration for its first apprentice(s); or

2. Between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.