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The DOL's Proposal to Overhaul Apprenticeship Regulations

In January, the U.S. Department of Labor (DOL) published a Notice of Proposed Rule Making that would overhaul the current regulations governing registered apprenticeship programs and labor standards for apprentices. The new rules aim to increase protection for apprentices, promote enhanced transparency and accountability and provide clarity regarding the roles of federal and state government in the National Apprenticeship System. The proposed rule is far reaching and would have significant impacts on new and existing registered apprenticeship programs, including multiemployer apprenticeship and training funds.

This alert summarizes what the major changes on the horizon might be and provides highlights of the DOL's proposal that would require apprenticeship and training plans to take action should the rule be finalized. If finalized, the changes would have various effective dates and compliance timelines. For example, apprenticeship plans registered by a State Apprenticeship Agency (SAA), such as Wisconsin-registered apprenticeship programs, would generally have to comply with the final rule two years after the SAA comes into compliance with the final rule. Programs registered at the federal level would generally have to comply within two years of the effective date of the final rule.

Proposed Changes and Potential Issues

The proposed rule introduces several new requirements regarding apprenticeship standards and apprentice agreements. For example, the proposed rule would require that apprenticeship standards incorporate details regarding related instruction provided to apprentices. Additionally, apprenticeship standards and agreements would be required to include information regarding apprentices' credentials and wages and the costs of the apprenticeship program.

In addition to the expanded information requirements for the standards, the proposed rule would implement a graduated schedule of wage increases, with the final wage step being no less than 75 percent of the journey worker wages. The proposal also overhauls the existing on-the-job training (OJT) structures for apprenticeship programs, mandating that apprenticeship programs use a unitary approach that requires at least 2,000 hours of OJT and 144 related instruction hours per each 2,000 hours on the job.

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A potentially concerning new provision for apprenticeship and training funds in the proposed rule would prohibit sponsors and participating employers from including non-compete clauses and non-disclosure provisions in apprenticeship agreements. According to the DOL, these changes are designed to ensure optimal labor market mobility for apprentices as they navigate their careers. If interpreted broadly, the non-compete restrictions could be applied to prohibit scholarship loan agreements that require an apprentice to pay back loans if the apprentice leaves the program or works for a non-contributing employer after completing the program.

The proposed rule would also impose comprehensive recordkeeping requirements on apprenticeship programs and revise the framework for collecting data from sponsors, imposing new extensive reporting requirements. Additionally, the proposed rule requires that the program sponsor (and any participating employer) allow the state or federal Registration Agency to access records for purposes of conducting program reviews.

The DOL also proposed changes to the criteria and processes for determining the suitability of new and existing registered apprenticeships. Under the proposal, the suitability determinations reside with the DOL's Office of Apprenticeship (OA). Additionally, the OA will periodically (at least every five years) review approved occupations to determine whether the occupation remains suitable for registered apprenticeship training and whether any adjustments are needed.

The proposal also modified provisions regarding governance of the National Apprenticeship System at the federal and state level, including expanding the role of the OA and clarifying the responsibilities of the SAAs.

Next Steps

Apprenticeship programs, sponsors, participating employers and other interested parties have until March 18, 2024, to submit comments on the proposal. To learn more about the DOL's proposed rule and how you can best be prepared, contact Karyn Durkin or another member of the Employee Benefits Practice.

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