

**Governor's Office of Workforce Innovation for a New Nevada (OWINN)
State Apprenticeship Council (SAC)**

Policy Number: 1.1

Originating Office: Governor's Office of Workforce Innovation for a New Nevada

Subject: Application of NAC 610.355, defining similar programs

Issued: February 6, 2018

Purpose: To provide clarity to the State Apprenticeship Council (SAC) on their obligations and duties regarding applications for proposed programs that are similar to registered programs and to allow the SAC to rely on O*NET codes to determine whether two occupations are similar under NAC 610.355.

Authorities/References: NAC 610.355; 29 CFR Part 29; Office of the Attorney General Memorandum – *Application of NAC 610.355* (January 4, 2018); Office of the Attorney General Memorandum – *Nevada State Apprenticeship Council* (February 28, 2017)

Action Required: Upon issuance, members of the State Apprenticeship Council will use O*Net codes in its interpretation of NAC 610.355 to notify program providers with similar objectives for similar jobs.

Background:

Pursuant to 29 CFR Part 29, the State Apprenticeship Council exercises its authority at the direction of the Governor's Office of Workforce Innovation, which serves as the State Apprenticeship Agency¹. Additionally, per Senate Bill 516, the Council is authorized to regulate apprenticeship programs, approve and reject programs in complying with NRS Chapter 610, which is to "regulate the supply of skilled workers in relation to the demand for skilled workers," and to "establish standards for the training of apprentices in approved programs."²

When the Council considers approving a new apprenticeship program by an employer or association of employers, NAC 610.355 - titled "Approval of Programs of Apprenticeship," - requires the Council to notify existing programs with similar objectives for similar jobs and give them between 30 and 60 days to comment before final action on the proposed program is taken.³ This provision only applies to applications for new apprenticeship programs and not to instances where an existing program is proposing revisions to the Council.

To determine whether two occupations are "similar" under NAC 610.355, meaning "having resemblance but not identical," the Council should use Occupational Information Network (O*NET) Codes that are based on the Standard Occupational Classification (SOC) system federal agencies used

¹ 29 CFR 29.13

² NRS 610.020

³ NAC 610.355(1)(2)

to categorize workers into occupational classes for data collection, calculation and dissemination purposes.

O*NET is a nationally recognized independent classification system, developed under the guidance of the US Department of Labor/Employment and Training Administration and defines occupations across industries based on the Standard Occupational Classification. The Standard Occupational Classification system is a federal statistical standard used by federal agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data⁴.

During previous Council meetings, members have raised concerns on whether “similar” programs were appropriately notified. However, differences emerge on what constitute a similar program. Without an objective measure of “similar” programs, differences will continue to emerge regarding whether a program was appropriately notified. Given that the O*NET codes are objective and classify occupations across industries, it provides the only objective manner in whether or not two programs are similar and hence should be notified. All apprenticeable occupation will have an O*NET code. If an occupation shares a similar code as another occupation being proposed under a new program then it will be notified appropriately.

A January 4th memo from the Deputy Attorney General reviewed the question regarding the use of O*NET codes and concluded that the Council may rely on O*NET codes in its interpretation of NAC 610.355. Furthermore, a memo on the matter submitted to the previous Council Chairman on February 28th, 2017, provided additional clarity that the reference to the notice on similar programs “is not a prohibition on the existence of programs with similar objectives, rather it creates a proposed standards.” The memo continues and states “Any decision by the Council on the approval or denial of a proposed program and/or standards must be consistent with the purposes and duties set forth in NRS Chapter 610.”

⁴ <https://www.onetcodeconnector.org/oca/step1>

Senate Bill No. 247–Senator Dondero Loop

CHAPTER.....

AN ACT relating to apprenticeships; revising the mandatory criteria for approval and registration under certain circumstances; revising requirements for the approval and registration of a proposed program; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The federal National Apprenticeship Act of 1937 authorizes and directs the United States Secretary of Labor to: (1) formulate and promote the furtherance of labor standards to safeguard the welfare of apprentices; (2) encourage the inclusion of such standards in contracts of apprenticeship; (3) bring together employers and labor for the creation of programs of apprenticeship; and (4) cooperate with state agencies in the establishment and promotion of standards of apprenticeship. (29 U.S.C. § 50) The Secretary of Labor has adopted regulations implementing the National Apprenticeship Act which places the responsibility for accomplishing those goals in the United States Department of Labor, but authorizes the Department to delegate authority to administer certain portions of the regulations to states under certain circumstances where the apprenticeship laws of a state conform to the federal regulations and the entities of the state satisfy the requirements for recognition by the Department. (29 C.F.R. Part 29)

In 2008, the Secretary of Labor updated the federal regulations concerning apprenticeship and required participating states to conform their apprenticeship laws, regulations and policies to those federal regulations in order to continue or obtain federal recognition. (29 C.F.R. Part 29)

Under existing law, the apprenticeship program in Nevada is administered by the State Apprenticeship Director under the direction of the Executive Director of the Office of Workforce Innovation in the Office of the Governor and with the advice and guidance of the State Apprenticeship Council, which has the authority to approve and register or reject proposed programs of apprenticeship. (NRS 223.820, 610.110, 610.120)

Section 1 of this bill revises the definition of “program” to more closely conform to federal regulations. **Section 2** of this bill revises existing statutory requirements for the approval and registration of such programs in conformity with federal regulations to enable them, with one exception, to be structured as: (1) a time-based program, which preserves the existing requirement that an apprentice acquire at least 2,000 hours of on-the-job learning; (2) a competency-based program that measures skill acquisition through an apprentice’s successful demonstration of acquired skills and knowledge; or (3) a hybrid approach that combines elements of both. An apprentice program in the construction trades is required to be structured as a time-based program. **Section 2** also: (1) prohibits the Council from approving a program that is proposed in a skilled trade for which there is already a program that has been approved and registered by the Council unless the program requires the completion of at least as many hours of on-the-job learning or at least the same number and quality of skills as all existing programs; and (2) prescribes the elements that the Council is required to consider to determine whether to approve or reject such a program.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 610.010 is hereby amended to read as follows:
610.010 As used in this chapter, unless the context otherwise requires:

1. “Agreement” means a written and signed agreement of indenture as an apprentice.

2. “Apprentice” means a person who is covered by a written agreement, issued pursuant to a program with an employer, or with an association of employers or an organization of employees acting as agent for an employer.

3. “Council” means the State Apprenticeship Council created by NRS 610.030.

4. “Disability” means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

5. “Executive Director” means the Executive Director of the Office of Workforce Innovation.

6. “Gender identity or expression” means a gender-related identity, appearance, expression or behavior of a person, regardless of the person’s assigned sex at birth.

7. “Office of Workforce Innovation” means the Office of Workforce Innovation in the Office of the Governor created by NRS 223.800.

8. “Program” means a program of training and instruction as an apprentice in an *apprenticeable* occupation ~~fin which a person may be apprenticed.~~, *as defined in 29 C.F.R. § 29.4.*

9. “Sexual orientation” means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

10. “State Apprenticeship Director” means the person appointed pursuant to NRS 610.110.

Sec. 2. NRS 610.144 is hereby amended to read as follows:

610.144 *1.* To be eligible for registration and approval by the Council, a proposed program must:

~~1.1~~ (a) Be an organized, written plan embodying the terms and conditions of employment, training and supervision of one or more apprentices in an *apprenticeable* occupation ~~fin which a person may~~



~~be apprenticed~~, as defined in 29 C.F.R. § 29.4, and be subscribed to by a sponsor who has undertaken to carry out the program.

~~[(2)]~~ (b) *Except as otherwise provided in this paragraph, use a:*

(1) *Time-based approach, as described in 29 C.F.R. § 29.5(b)(2)(i);*

(2) *Competency-based approach, as described in 29 C.F.R. § 29.5(b)(2)(ii); or*

(3) *Hybrid approach, as described in 29 C.F.R. § 29.5(b)(2)(iii).*

↪ *A program for a construction trade must use a time-based approach.*

(c) Contain the pledge of equal opportunity prescribed in 29 C.F.R. § 30.3(c) and, when applicable:

~~[(a)]~~ (1) A plan of affirmative action in accordance with 29 C.F.R. § 30.4;

~~[(b)]~~ (2) A method of selection authorized in 29 C.F.R. § 30.10;

~~[(e)]~~ (3) A nondiscriminatory pool for application as an apprentice; or

~~[(d)]~~ (4) Similar requirements expressed in a state plan for equal opportunity in employment in apprenticeships adopted pursuant to 29 C.F.R. Part 30 and approved by the United States Department of Labor.

~~[(3)]~~ (d) *Provide for the development of skills that are intended to enable an apprentice to engage in a skilled trade generally, rather than for a particular employer or sponsor.*

(e) Contain:

~~[(a)]~~ (1) Provisions concerning the employment and training of the apprentice in a skilled trade;

~~[(b)]~~ (2) A term of apprenticeship *that:*

(I) *If the program uses a time-based approach, requires the completion of not less than 2,000 hours of ~~[work-experience,]~~ on-the-job learning, consistent with training requirements as established by practice in the trade;*

~~[(e)]~~ (II) *If the program uses a competency-based approach, specifies the skills that must be demonstrated by an apprentice and addresses how on-the-job learning will be integrated into the program; or*

(III) *If the program uses a hybrid approach, specifies the skills that must be acquired and the minimum number of hours of on-the-job learning that must be completed by an apprentice;*

(3) An outline of the processes in which the apprentice will receive supervised experience and training on the job, and the



allocation of the approximate time to be spent in each major process;

~~{(d)}~~ (4) Provisions for organized, related and supplemental instruction in technical subjects related to the trade with a minimum of 144 hours for each year of apprenticeship, given in a classroom or through trade, industrial or correspondence courses of equivalent value or other forms of study approved by the Council;

~~{(e)}~~ (5) A progressively increasing, reasonable and profitable schedule of wages to be paid to the apprentice consistent with the skills acquired, not less than that allowed by federal or state law or regulations, ~~{(e)}~~ by a collective bargaining agreement ~~{(e)}~~ or by the *minimum apprentice wage established by the Council*;

~~{(f)}~~ (6) Provisions for a periodic review and evaluation of the apprentice's progress in performance on the job and related instruction and the maintenance of appropriate records of such progress;

~~{(g)}~~ (7) A numeric ratio of apprentices to journeymen consistent with proper supervision, training, safety, continuity of employment and applicable provisions in collective bargaining agreements, in language that is specific and clear as to its application ; ~~{(g)}~~ ~~in terms of job sites, workforces, departments or plants~~;

~~{(h)}~~ (8) A probationary period that is reasonable in relation to the full term of apprenticeship, with full credit given for that period toward the completion of the full term of apprenticeship;

~~{(i)}~~ (9) Provisions for adequate and safe equipment and facilities for training and supervision and for the training of apprentices in safety on the job and in related instruction;

~~{(j)}~~ (10) The minimum qualifications required by a sponsor for persons entering the program, with an eligible starting age of not less than 16 years;

~~{(k)}~~ (11) Provisions for the placement of an apprentice under a written agreement as required by this chapter, incorporating directly or by reference the standards of the program;

~~{(l)}~~ (12) Provisions for the granting of advanced standing or credit to all applicants on an equal basis for previously acquired experience, training or skills, with commensurate wages for each advanced step granted;

~~{(m)}~~ (13) Provisions for the transfer of the employer's training obligation when the employer is unable to fulfill his or her obligation under the agreement to another employer under the same or a similar program with the consent of the apprentice and the local joint apprenticeship committee or sponsor of the program;



~~(a)~~ (14) Provisions for the assurance of qualified training personnel and adequate supervision on the job;

~~(e)~~ (15) Provisions for the issuance of an appropriate certificate evidencing the successful completion of an apprenticeship;

~~(p)~~ (16) An identification of the Office of Workforce Innovation as the agency for registration of the program;

~~(q)~~ (17) Provisions for the registration of agreements and of modifications and amendments thereto;

~~(r)~~ (18) Provisions for notice to the State Apprenticeship Director of persons who have successfully completed the program and of all cancellations, suspensions and terminations of agreements and the causes thereof;

~~(s)~~ (19) Provisions for the termination of an agreement during the probationary period by either party without cause;

~~(t)~~ (20) A statement that the program will be conducted, operated and administered in conformity with the applicable provisions of 29 C.F.R. Part 30 or a state plan for equal opportunity in employment in apprenticeships adopted pursuant to 29 C.F.R. Part 30 and approved by the United States Department of Labor;

~~(u)~~ (21) The name and address of the appropriate authority under the program to receive, process and make disposition of complaints; and

~~(v)~~ (22) Provisions for the recording and maintenance of all records concerning apprenticeships as may be required by the Council and applicable laws.

2. If a program of apprenticeship in a skilled trade is proposed by an employer or association of employers for approval and registration by the Council and the Council has previously approved and registered a program for the skilled trade, the Council shall provide a copy of the proposed program to the sponsor of the approved and registered program and hold a hearing before approving or rejecting the application. The Council shall not approve a proposed program pursuant to this subsection unless the program requires the completion of at least as many hours of on-the-job learning or the demonstration of at least the same number and quality of skills, or both, as applicable, as all existing approved and registered programs in the relevant skilled trade.

3. To determine whether a proposed program should be approved or rejected pursuant to subsection 2, the Council shall consider, in addition to the requirements in subsections 1 and 2, without limitation:



(a) Relevant information concerning the approved and registered program, including, without limitation, the standards for apprenticeship of the program;

(b) Whether the sponsor of the approved and registered program is jointly administered by labor and management;

(c) The provisions of any applicable collective bargaining agreements;

(d) Dictionaries of occupational titles;

(e) Opinions of experts provided by interested parties, including, without limitation, organized labor, licensed contractors and associations of contractors;

(f) Recognized labor and management practices in the relevant industry;

(g) Scope of work descriptions issued by the Office of Workforce Innovation and the United States Department of Labor; and

(h) The supply of skilled workers in the trade in relation to the demand for skilled workers in the trade and the extent to which the sponsor of the approved and registered program is willing and able to provide apprentices to the proposed program.

↳ The Council may condition approval of the proposed program on the payment of compensation to apprentices that is equal to or greater than the compensation provided by the approved and registered apprenticeship program.

