

STATE OF NEVADA

JOE LOMBARDO
Governor



DR. KRISTOPHER SANCHEZ
Director

BRETT K. HARRIS, ESQ.
Labor Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER

July 10, 2024

Ms. Vivienne Rakowsky
Lewis Brisbois Bisgaard & Smith LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Email: vivienne.rakowsky@lewisbrisbois.com

Re: Request for Advisory Opinion—Air Conditioning Trade Association Inquiry Regarding Registered Apprenticeship Program Reciprocity

Dear Ms. Rakowsky,

Pursuant to Nevada Administrative Code (“NAC”) Section 607.650, an Advisory Opinion has been requested on behalf of the Air Conditioning Trade Association (“ACTA”), an apprenticeship program Registered in California and South Carolina. ACTA requests an Advisory Opinion regarding apprentice reciprocity in Nevada, and its application to Senate Bill 82 from the 2023 Nevada Legislature, which significantly amended Nevada’s Apprenticeship Utilization Act (“AUA”) codified in NRS 338.01165. Senate Bill 82 went into effect January 1, 2024.

Specifically, ACTA requests an Advisory Opinion confirming that:

- (1) The Apprentice Reciprocity Statement posted on the Office of the Labor Commissioner’s website applies to the changes in the Apprentice[ship] Utilization Act that went into effect on January 1, 2024; and
- (2) The ACTA apprenticeship program qualifies to provide apprentices to Nevada Contractors for public works projects in Nevada pursuant to the guidelines in the Reciprocity Agreement.

As set forth in NAC 607.650, this Advisory Opinion is limited to the facts and circumstances set forth in the request. This Advisory Opinion shall not apply to any pending administrative, civil, or criminal proceeding and shall not be relied upon by any party, whether a party at issue in the facts or not, in any future proceeding unrelated to the specific and unique facts and circumstances set forth in the request.

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RELEVANT FACTS

As stated in the request for advisory opinion, “ACTA is an Apprenticeship Program that operates in California and...South Carolina pursuant to state and federal standards.” ACTA indicates it specializes in training in the HVAC industry through a Sheet Metal Apprenticeship Program, Service Technician Training, and other industry-related training for contractor employees and individuals. ACTA states its federally approved program is four (4) years, involves live classroom instruction, ninety-six (96) hours of hands-on training each year, exams, and draft fittings and fabrication with an ACTA instructor. ACTA’s California Standards were approved in August 2003 and South Carolina approval occurred in 2022.

ACTA currently has several employers that perform work on public works projects in both California and Nevada. The contractors wish to use their current ACTA apprentices to work on Nevada public works projects and accumulate apprentice hours that comply with Senate Bill 82 and the AUA. However, ACTA does not currently have Nevada State Apprenticeship Council (“NSAC”) approval, nor is it registered by the NSAC pursuant to NRS 610.144 and NAC 610.310-465. However, ACTA states it is currently applying for approval and recognition from NSAC.

While ACTA applies for registration with the NSAC, it requests an Advisory Opinion as to whether the terms of Nevada’s “Apprentice Reciprocity” statement apply to ACTA’s California apprentices. ACTA references the Apprentice Reciprocity Statement posted by the Office of the Labor Commissioner in response to the increased demand for apprentices due to the passing of the AUA, codified in NRS 338.01165.

The OLC’s Apprentice Reciprocity Statement asserts:

The Nevada Labor Commissioner recognizes the issue of reciprocity between apprenticeship programs between other states. For purposes of allowing reciprocity between apprenticeship programs between the State of Nevada and other states, the Labor Commissioner is issuing the following guidance.

- Reciprocity between apprenticeship programs registered in other states and the State of Nevada will be allowed on a limited basis on public works projects in the State of Nevada where prevailing wage applies and the Apprenticeship Utilization Act applies.
- Apprenticeship Programs registered in other states and associated with international associations, trade associations, and any other applicable associations or unions typically follow the same national guidelines and standards for a craft, job classification, and/or type of work performed.
- Those guidelines and standards and any other applicable state laws and regulations shall be followed.
- The association that dispatches the apprentice shall have responsibility for ensuring that the standards, rules, laws and regulations governing the supervision of apprentices are followed and shall ensure the employer follows these as well.
- Assignments should not exceed six (6) months in duration.

APPLICABLE LAW

Nevada Revised Statute 338.01165 codifies the Apprenticeship Utilization Act (AUA). It was significantly revised in 2023, and it mandates the following:

NRS 338.01165 Requirements relating to use of apprentices on public works; documentation of compliance; annual report; penalties; apprenticeship agreement; regulations.

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in vertical construction who employs workers on one or more public works during a calendar year pursuant to [NRS 338.040](#) shall use one or more apprentices for at least 10 percent, or any increased percentage established pursuant to subsection 3, of the total hours of labor worked for each apprenticed craft or type of work to be performed on those public works.

2. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in horizontal construction who employs workers on one or more public works during a calendar year pursuant to [NRS 338.040](#) shall use one or more apprentices for at least 3 percent, or any increased percentage established pursuant to subsection 3, of the total hours of labor worked for each apprenticed craft or type of work to be performed on those public works.

3. On or after January 1, 2021, the Labor Commissioner, in collaboration with the State Apprenticeship Council, may adopt regulations to increase the percentage of total hours of labor required to be performed by an apprentice pursuant to subsection 1 or 2 by not more than 2 percentage points.

4. An apprentice who graduates from an apprenticeship program while employed on a public work shall:

(a) Be deemed an apprentice on the public work for the purposes of subsections 1 and 2.

(b) Be deemed a journeyman for all other purposes, including, without limitation, the payment of wages or the payment of wages and benefits to a journeyman covered by a collective bargaining agreement.

5. If a contractor or subcontractor who is a signatory to a collective bargaining agreement with a union that sponsors an apprenticeship program for an apprenticed craft or type of work for which the term of apprenticeship is not more than 3 years requests an apprentice from that apprenticeship program and an apprentice in the appropriate craft or type of work is not available, the contractor or subcontractor may utilize a person who graduated from the apprenticeship program in that craft or type of work within the 3 years immediately preceding the request from the contractor or subcontractor. Such a person:

(a) Shall be deemed an apprentice on the public work for the purposes of subsections 1 and 2.

(b) Shall be deemed a journeyman for all other purposes, including, without limitation, the payment of wages and benefits to a journeyman pursuant to the collective bargaining agreement.

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6. A contractor or subcontractor engaged on a public work is not required to use an apprentice in a craft or type of work performed in a jurisdiction recognized by the State Apprenticeship Council as not having apprentices in that craft or type

of work.

7. A contractor or subcontractor engaged on a public work shall maintain and provide to the Labor Commissioner any supporting documentation to show that the contractor or subcontractor made a good faith effort to comply with subsection 1 or 2, as applicable, as determined by the Labor Commissioner. For purposes of this subsection, a contractor or subcontractor:

(a) Makes a good faith effort to comply with subsection 1 or 2, as applicable, if the contractor or subcontractor:

(1) Submits to the apprenticeship program, on the form prescribed by the Labor Commissioner, a request for an apprentice not earlier than 10 days before the contractor or subcontractor is scheduled to begin work on the public work and not later than 5 days after the contractor or subcontractor actually begins work on the public work.

(2) If the apprenticeship program does not provide an apprentice for the appropriate apprenticed craft or type of work upon a request pursuant to subparagraph (1), submits additional requests to the apprenticeship program, on the form prescribed by the Labor Commissioner, at least once every 30 days during the period that the contractor or subcontractor is working on the public work. If a contractor or subcontractor does not work continuously on the public work, the contractor or subcontractor shall submit an additional request each time that the contractor or subcontractor resumes work on the public work not earlier than 10 days before the contractor or subcontractor is scheduled to resume work on the public work and not later than 5 days after the contractor or subcontractor actually resumes work on the public work. The requirement for the submission of an additional request in this subparagraph does not apply whenever a contractor or subcontractor has one or more apprentices employed for that apprenticed craft or type of work.

(b) Does not make a good faith effort to comply with subsection 1 or 2, as applicable, as determined by the Labor Commissioner, if the contractor or subcontractor is required to enter into an apprenticeship agreement pursuant to subsection 16 and refuses to do so.

8. The supporting documentation required pursuant to subsection 7 may include, without limitation:

(a) Documentation of the submission by the contractor or subcontractor of one or more requests, as applicable, pursuant to subsection 7; and

(b) Documentation that the apprenticeship program denied such a request, did not respond to such a request or responded that the program was unable to provide the requested apprentice.

9. The contractor or subcontractor and the apprenticeship program shall coordinate the starting date for any apprentice provided by the program.

10. On or before February 15 of each year, a contractor or subcontractor engaged in vertical or horizontal construction, as applicable, who employs a worker on one or more public works pursuant to [NRS 338.040](#) shall report to the Labor Commissioner, on the form prescribed by the Labor Commissioner, the following information regarding those public works for the previous calendar year:

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(a) For each apprenticed craft or type of work, the total number of hours worked on vertical construction.

(b) For each apprenticed craft or type of work, the total number of hours worked on horizontal construction.

(c) For each apprenticed craft or type of work, the total number of hours worked by apprentices on vertical construction.

(d) For each apprenticed craft or type of work, the total number of hours worked by apprentices on horizontal construction.

(e) For each apprenticed craft or type of work, the percentage of the total number of hours worked on vertical construction that were worked by apprentices.

(f) For each apprenticed craft or type of work, the percentage of the total number of hours worked on horizontal construction that were worked by apprentices.

11. The information required to be reported pursuant to subsection 10 must not include any identifying information about a public work or an apprentice or employee.

12. If the Labor Commissioner, on his or her own initiative or based on a complaint, makes a determination based on the information submitted pursuant to subsection 10 that a contractor or subcontractor did not make a good faith effort to comply with the provisions of subsection 1 or 2, as applicable, the Labor Commissioner shall notify the contractor or subcontractor in writing of the determination and:

(a) Except as otherwise provided in paragraph (b), shall assess a penalty as follows:

(1) If the apprentice utilization rate by the contractor or subcontractor on vertical construction of a public work is:

(I) Seven and one-half percent or more but less than 10 percent of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$2,500 or \$2 for each hour below the percentage required, whichever is higher.

(II) More than 4 percent but less than 7.5 percent of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$3,000 or \$4 for each hour below the percentage required, whichever is higher.

(III) Four percent or less of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$5,000 or \$6 for each hour below the percentage required, whichever is higher.

(2) If the apprentice utilization rate by the contractor or subcontractor on horizontal construction of a public work is:

(I) Two percent or more but less than 3 percent of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$2,500 or \$2 for each hour below the percentage required, whichever is higher.

(II) More than 1 percent but less than 2 percent of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$3,000 or \$4 for each hour below the percentage required, whichever is higher.

(III) One percent or less of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$5,000 or \$6 for each hour below the percentage required, whichever is higher.

(b) Shall not assess a penalty if the total number of hours of labor required to be worked by apprentices:

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(1) On vertical construction pursuant to subsection 1, as applicable, during the previous calendar year is less than 40 hours.

(2) On horizontal construction pursuant to subsection 2, as applicable, during the previous calendar year is less than 24 hours.

13. Except for good cause, the Labor Commissioner may not initiate his or

her own investigation or accept a complaint based on the information submitted by a contractor or subcontractor pursuant to subsection 10 after May 1 immediately following the date on which the report was received by the Labor Commissioner.

14. In addition to the penalties set forth in subsection 12, if the Labor Commissioner, on his or her own initiative or based on a complaint, makes a determination that a contractor or subcontractor did not submit the report required pursuant to subsection 10 or made no attempt to comply with the provisions of subsection 1 or 2, as applicable, the Labor Commissioner shall:

- (a) Impose a penalty of not less than \$10,000 but not more than \$75,000; or
- (b) Disqualify the contractor or subcontractor from being awarded a contract for a public work for at least 180 days but not more than 2 years.

15. A contractor or subcontractor may request a hearing on the determination of the Labor Commissioner pursuant to subsection 12 or 14 within 10 days after receipt of the determination of the Labor Commissioner. The hearing must be conducted in accordance with regulations adopted by the Labor Commissioner. If the Labor Commissioner does not receive a request for a hearing pursuant to this subsection, the determination of the Labor Commissioner is a final decision for the purposes of judicial review pursuant to [chapter 233B](#) of NRS.

16. A contractor or subcontractor who is not a signatory to a collective bargaining agreement with the union sponsoring the apprenticeship program for an apprenticed craft or type of work engaged on a public work shall enter into an apprenticeship agreement for each apprentice required to be used in the construction of a public work.

17. As used in this section:

(a) “Apprentice” means a person enrolled in an apprenticeship program recognized by the State Apprenticeship Council.

(b) “Apprenticed craft or type of work” means a craft or type of work for which there is an existing apprenticeship program recognized by the State Apprenticeship Council.

(c) “Apprenticeship program” means an apprenticeship program recognized by the State Apprenticeship Council.

(d) “Journeyman” has the meaning ascribed to it in [NRS 624.260](#).

(e) “State Apprenticeship Council” means the State Apprenticeship Council created by [NRS 610.030](#).

Nevada Revised Statutes Chapter 610 governs the Nevada State Apprenticeship Council (NSAC). NSAC recognizes and registers programs pursuant to NRS 610.144:

NRS 610.144 Requirements for program to be eligible for registration and approval by State Apprenticeship Council.

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

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

(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:

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

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

(3) A nondiscriminatory pool for application as an apprentice; or

(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.

(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:

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

(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 on-the-job learning, consistent with training requirements as established by practice in the trade;

(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;

(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;

(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, by a collective bargaining agreement or by the minimum apprentice wage established by the Council;

(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;

(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;

(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;

(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;

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

(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;

(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;

(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;

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

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

(16) An identification of the Office of Labor Commissioner as the agency for registration of the program;

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

(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 therefor;

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

(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;

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

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

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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 Labor Commissioner 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.

The NSAC further evaluates whether to recognize and register programs under Nevada Administrative Code 610.310-610.360.

ADVISORY OPINION

In your Request for Advisory Opinion, you pose the following questions:

(1) [Does] [t]he Apprentice Reciprocity Statement posted on the Office of the Labor Commissioner's website appl[y] to the changes in the Apprentice[ship] Utilization Act that went into effect on January 1, 2024?

Answer: Yes, the Apprentice Reciprocity Statement posted on the OLC's website applies to changes made under Senate Bill 82.

(2) [Does] [t]he ACTA apprenticeship program qualif[y] to provide apprentices to Nevada Contractors for public works projects in Nevada pursuant to the guidelines in the Reciprocity Agreement?

Answer: Yes, ACTA qualifies under the OLC's Reciprocity Statement for the limited basis of providing apprentices to Nevada employers on Public Works Projects for purposes of complying with Senate Bill 82, and the Apprenticeship Utilization Act codified in NRS 338.01165. Since ACTA is currently recognized in California, South Carolina, and complies with federal guidelines, it is permitted to provide apprentices to Nevada employers on Public Works Projects for purposes of complying with NRS 338.01165 for up to, but not exceeding, six (6) months. ACTA apprentices employed on Nevada Public Works Projects must otherwise comply with Nevad Revised Statutes

Chapters 338 and 610 and Nevada Administrative Code Chapters 338 and 610. In the event ACTA intends to provide apprentices to Nevada employers on Public Works Projects for longer than six (6) months from the date it first provides an apprentice to a Nevada employer to work on a Nevada public works project, it must seek recognition and registration by the Nevada State Apprenticeship Council.

Please be advised that this Advisory Opinion is limited to the specific facts and circumstances described herein. The Office of the Labor Commissioner and/or the Nevada State Apprenticeship Council may revisit this issue through the Administrative Rulemaking Process. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretation of the statutes or rules upon which any opinion is based may require modification or abandonment of this Advisory Opinion.

Thank you for reaching out to the Office of the Labor Commissioner with your questions. We appreciate the opportunity to provide information and education regarding Nevada labor laws and their application. Should you need any additional clarification, please do not hesitate to contact our office at (702) 486-4650.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett K. Harris".

Brett K. Harris, Esq.
Labor Commissioner