
COMMONWEALTH OF KENTUCKY
DEPARTMENT OF WORKFORCE DEVELOPMENT

GUIDANCE NAME: Discontinuation of Services to Employers by the Wagner-Peyser Act Employment Service

GUIDANCE NUMBER: 25-001

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APPLIES TO/INTEREST OF: Kentucky Wagner-Peyser Workforce local and state Employment Services staff who assist in the placement and referral of agricultural workers through clearance orders and Kentucky Career Center (KCC) Staff, Local Workforce Boards, and Local Workforce Development Area (LWDA) staff

POINT OF CONTACT: Division of Technical Assistance, compliance.unit@ky.gov

PURPOSE:

This guidance details the procedures and requirements for discontinuation of services to employers by the Wagner-Peyser Act Employment Service. “Employer” means employers, agents, farm labor contractors, joint employers, and successors in interest to any employer, agent, farm labor contractor, or joint employer. 20 CFR 651.10

GUIDANCE:

- A. As key stakeholders, state workforce agency officials must initiate procedures for discontinuation of services to employers who (“bases for discontinuation”):
1. Submit and refuse to correct or withdraw job orders containing terms and conditions that are contrary to employment-related laws; or
 2. Submit job orders and refuse to provide assurances, or refuse to withdraw job orders that do not contain assurances required pursuant to the Agricultural Recruitment System for U.S. Workers; or

3. Are found through field checks or otherwise to have either misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances on job orders; or
 4. Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws, and notifications of this final determination have been provided to the U.S. Department of Labor (“DOL”) or the state workforce agency by that enforcement agency including those who are currently debarred from participating in the H-2A or H-2B foreign labor certification programs; or
 5. Are found to have violated applicable federal employment service regulations or
 6. Refuse to accept qualified workers referred through the clearance system for criteria clearance orders; or
 7. Refuse to cooperate in field checks conducted pursuant to 20 CFR 653.503 (pertains to where the state workforce agency has made placements on agricultural clearance orders); or
 8. Repeatedly cause the initiation of the procedures for discontinuation of services. 20 CFR 658.501(a).
- B. If a local employment services office or state workforce agency staff member has information that an employer participating in the employment services may have committed fraud or misrepresentation in connection with its current or prior temporary labor certification or may not have complied with the terms of such accreditation, under, for example, the H2-A or H-2B visa programs, state workforce agency officials must notify the OFLC National Processing Center and the Wage and Hour Division of the alleged noncompliance. Suppose the circumstances occurred within the previous three years. In that case, state workforce agency officials must determine whether there is a basis, applying one or more of the eight bases for discontinuation described above, for which the state workforce agency must initiate procedures for discontinuation of services. 20 CFR 655.184
- C. The process of notifying employers of the intent to discontinue services:
- a. Except for the situations where state workforce agency officials must discontinue services immediately because an employer has met any of the eight bases described above and in the judgment of the State Administrator, exhaustion of the administrative procedures set forth would cause substantial harm to workers when the state workforce agency officials determine that there is an applicable basis for discontinuation of services, the state workforce agency officials must notify the employer in writing that it intends to discontinue the provision of employment services and must provide the reasons for proposing discontinuation of services:
 1. If the decision is based on the first basis, the state workforce agency must specify the date the order was submitted, the job order involved, and the terms and conditions contrary to employment-related law and the laws involved. The state workforce agency must notify the employer in writing

that all employment services will be terminated unless the employer within 20 working days: 1) provides adequate evidence that the terms and conditions are not contrary to employment-related laws or 2) withdraws the terms and conditions and resubmits the job order in compliance with all employment-related laws; or 3) if the job is no longer available, makes assurances that all future job orders are submitted will comply with all employment-related laws.

2. If the decision is based on the second basis, the state workforce agency must specify the date the order was submitted, the job order involved, the assurances involved, and explain how the employer refused to provide the assurances. The state workforce agency must notify the employer that all employment services will be terminated unless the employer, within 20 working days, 1) resubmits the order with the required assurances or 2) if the job is no longer available, makes assurances that all future job orders submitted will contain all assurances required pursuant to the Agricultural Recruitment System for U.S. Workers at 20 CFR 653, subpart F.
3. If the decision is based on the third basis, the state workforce agency must specify the terms and conditions the employer misrepresented or the assurances with which the employer did not fully comply and explain how the employer misrepresented the terms or conditions or failed to comply with assurances on the job order. The state workforce agency must notify the employer that all employment services will be terminated unless the employer within 20 working days: 1) provides adequate evidence that terms and conditions of employment were not misrepresented, or 2) provides adequate evidence that there was full compliance with the assurances made on the job orders, or 3) Provides adequate evidence that it has resolved the misrepresentation of terms and conditions of employment or noncompliance with assurances and provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances.
4. If the decision is based on the fourth basis, the state workforce agency must provide evidence of the final determination, including debarment. For final determinations, the state workforce agency must specify the enforcement agency's findings of facts and conclusions of law as to the employment-related law violation(s). For final debarment orders, the state workforce agency must specify the period for which the employer is debarred from participating in one of the DOL's foreign labor certification programs. The state workforce agency must notify the employer that all employment services will be terminated unless the employer within 20 working days: 1) provides adequate evidence that the enforcement agency's determination is not final because, for example, an order has been entered holding the matter status quo pending appeal (stayed),

overturned, or reversed; or 2) provides adequate evidence that as applicable, the DOL's debarment is no longer in effect and the employer has completed all required actions imposed by the enforcement agency as a consequence of the violation, including payment of any fines or restitution to remediate the violation; or 3) provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

5. If the decision is based on the fifth basis, the state workforce agency must specify which employment services regulation, as defined in 20 CFR 651.10, the employer has violated and must provide basic facts to explain the violation. The state workforce agency must notify the employer that all employment services regulations will be terminated unless the employer within 20 working days: 1) provides adequate evidence that the employer did not violate the employment services regulations, or 2) provides adequate evidence that appropriate restitution has been made or remedial action taken; *and* 3) provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.
6. If the decision is based on the sixth basis, the state workforce agency must indicate that the employer filed the job order pursuant to 20 CFR 655, subpart B, and specify the name of each worker the state workforce agency referred to and the employer did not accept. The state workforce agency must notify the employer that all employment services will be terminated unless the employer within 20 working days: 1) provides adequate evidence that the workers were accepted, or 2) provides adequate evidence that the workers were not available to accept the job, or 3) provides adequate evidence that the workers were not qualified, or 4) provides adequate evidence that the workers were referred after the period described in 20 CFR 655.135(d) elapsed; or 5) provides adequate evidence that, after refusal, the employer accepted the qualified workers referred; or appropriate restitution has been made or other remedial action taken; and 6) Provides assurances that qualified workers referred in the future will be accepted or, if the 50 Percent Rule has lapsed, provides assurances that qualified workers referred on all future criteria clearance orders will be accepted.
7. If the decision is based on the seventh basis, the state workforce agency must explain how the employer did not cooperate in the field check. The state workforce agency must notify the employer that all employment services will be terminated unless the employer within 20 working days: 1) provides adequate evidence that it did cooperate, or 2) immediately cooperates in the conduct of field checks *and* provides assurances that it will cooperate in future field checks.

8. If the decision is based on the eighth basis, the state workforce agency must list and provide essential facts explaining the prior instances where the employer has repeatedly caused the initiation of discontinuation proceedings. The state workforce agency must notify the employer that all employment services will be terminated unless the employer, within 20 working days, provides adequate evidence that the state workforce agency's initiation of discontinuation of services in prior proceedings was unfounded. 20 CFR § 655.184

D. What occurs after the state workforce agency notifies the employer of the intent to discontinue services:

1. Within 20 working days of receipt of the employer's response to the notification or at least 20 working days after the employer has received the notification, if the state workforce agency does not receive a response, the state workforce agency must notify the employer of its final determination. Suppose the state workforce agency determines that the employer did not provide a satisfactory response in accordance with 20 CFR 658.502(a). In that case, the state workforce agency's notification must specify the reasons for its determination and state that the discontinuation of services is effective 20 working days from the date of notification. The notification must also state that the employer may request reinstatement or appeal the determination by requesting a hearing pursuant to 20 CFR 658.504 and that a request for a hearing stays the discontinuation pending the outcome of the hearing. Suppose the employer does not request a hearing. In that case, the state workforce agency must also notify the DOL ETA Office of Workforce Investment of any final determination to discontinue employment services within 10 working days of the date the determination becomes effective.
2. Where the state workforce agency discontinues services immediately, the state workforce agency's notification must specify the facts supporting the applicable basis for discontinuation as outlined in paragraph A herein, the reasons that exhaustion of the administrative procedures would cause substantial harm to workers and that services are discontinued as of the date of the notification. The notification must also state that the employer may request reinstatement or appeal the determination by requesting a hearing pursuant to 20 CFR 658.504 and that a request for a hearing relating to immediate discontinuation does not stay the discontinuation pending the outcome of the hearing. Within 10 working days of the date of issuance, the state workforce agency must also notify the DOL ETA Office of Workforce Investment of any determination to discontinue employment services immediately.
3. If the state workforce agency discontinues services to an employer subject to Federal Contractor Job Listing Requirements, it must notify the DOL ETA regional office immediately.

4. If the state workforce agency discontinues services to an employer based on a complaint filed pursuant to 20 CFR 658.411, the state workforce agency must notify the complainant of the employer's discontinuation of services.
5. If the state workforce agency discontinues services to an employer, the employer cannot participate in or receive Wagner-Peyser Act employment services provided by the employment service offices, including by any state workforce agency, to employers pursuant to 20 CFR 652 and 653. From the date of discontinuance, the state workforce agency that issued the determination must remove the employer's active job orders from the clearance system. No state workforce agency may process any future job orders from the employer or provide any other services pursuant to 20 CFR 652 and 653 unless services have been reinstated under 20 CFR 658.504.
6. State workforce agencies must continue to provide the full range of employment services and other appropriate services to workers whose employers experience discontinuation of services. 20 CFR 655.184

E. What occurs after the state workforce agency discontinues services:

1. The employer may submit a written request for reinstatement of services to the state workforce agency or may, within 20 working days of receiving notice of the state workforce agency's final determination, appeal the discontinuation by submitting a written request for a hearing.
2. If the employer submits a written request for reinstatement of services to the state workforce agency: 1) within 20 working days of receipt of the employer's request for reinstatement, the state workforce agency must notify the employer of its decision to grant or deny the request. Suppose the state workforce agency denies the request for reinstatement. In that case, it must specify the reason for the denial and notify the employer that it may request a hearing within 20 working days, *and* 2) the state workforce agency must reinstate services if: 1) the employer provides adequate evidence that the policies, procedures, or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar circumstances are not likely to occur in the future; *and* 2) the employer provides adequate evidence that it has responded to all findings of an enforcement agency, state workforce agency, or DOL ETA, including payment of any fines or restitution to remediate the violation, that was the basis of the discontinuation of services, if applicable.
3. If the employer submits a timely request for a hearing: 1) the state workforce agency must follow the procedures in 20 CFR 658.417; *and* 2) the state workforce agency must reinstate services to the employer if ordered to do so by a state hearing official, DOL Regional Administrator, or federal Administrative Law Judge as a result of a hearing offered pursuant to 20 CFR 658.417.
4. Within 10 working days of the date of issuance, the state workforce agency must notify the DOL ETA Office of Workforce Investment of any determination to

reinstate employment services or any decision on appeal upholding a state workforce agency's determination to discontinue services. 20 CFR 655.184

REFERENCES:

WIOA regulations 20 CFR 651, 20 CFR 652, 20 CFR 653, 20 CFR 655, 20 CFR 658

Improving Protections for Workers in Temporary Agricultural Employment in the U.S.,
("Farmworker Protection Final Rule") 89 FR 33898, 2024 WL 1833439, effective April 29, 2024