



OhioMeansJobs

Summit & Medina Counties

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OHIO LOCAL WORKFORCE AREA 2
POLICY LETTER C-17
GUIDELINES FOR CONDUCTING
LABOR EXCHANGE ACTIVITIES

- I. **SUBJECT:** Guidelines for Conducting Labor Exchange Activities
 - II. **PURPOSE:** The purpose of this policy is to provide guidelines to business services staff at OhioMeansJobs Summit and Medina Counties for conducting labor exchange activities specific to employer services. These activities include accepting and refusing job orders, processing job orders, and refusing, discontinuing, or limiting services to employers.
 - III. **EFFECTIVE DATE:** July 1, 2025
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IV. **BACKGROUND**

Under WIOA, Ohio is required to deliver labor exchange activities as part of a comprehensive workforce system. Labor exchange services offered to employers include, but are not limited to, referral of job seekers to available job openings, assistance in the development of job order requirements, matching job seeker experience with job requirements, skills and attributes, assisting employers with special recruitment needs, arranging job fairs, assisting employers with analyzing hard-to-fill job orders, assisting with job restructuring, and helping employers manage layoffs.

As labor exchange activities are part of the comprehensive workforce system, these activities may be provided by a variety of partners. These partners include, but are not limited to, those providing Wagner-Peyser and veteran services and those working in the local workforce system, OhioMeansJobs Center, county department of job and family service, county children services agency, and county child support enforcement agency. It should be noted that any labor exchange activities funded through Wagner-Peyser must be provided by state merit staff.

Workforce Innovation and Opportunity Act Policy Letter No. 17-01 requires that OhioMeansJobs.com be used for labor exchange activities conducted on behalf of an employer, including job postings and resume searches. OhioMeansJobs.com replaces all previously existing labor exchange systems. The use of OhioMeansJobs.com illustrates the shift from a staff-assisted system to a self-service system. However, local staff will continue to be readily available to assist employers with their business needs.

V. **DEFINITIONS**

Affirmative action job order. A job order that seeks qualified applicants, particularly members of a specified group who, for non-occupationally valid purposes, have been discouraged from entering certain occupational fields.

Agricultural Recruitment System (ARS). The Agricultural Recruitment System (ARS) provides agricultural employers a way to recruit United States (US) workers to perform farm work on a temporary, less than a year-round basis (20 CFR 653 Subpart F). The ARS is a free process intended to recruit only US domestic workers. In Ohio, ARS is set up as a job post type in the ARIES case management system. Bona fide job order: a current and valid job opening that exists prior to any

referrals being made, and there is a reasonable basis for concluding that the employer is a legitimate employer.

Bona fide occupational qualification (BFOQ). An employment decision or request relating to age, sex, national origin, or religion and is based on a finding that such a characteristic is necessary to the individual's ability to perform the job in question.

Casual labor. Work that does not further the business of the employer, typically on a one-time or very sporadic basis.

Domestic worker. A person who works within the employer's household performing a variety of household services for an individual or a family.

Job order. A request by an employer to have an OhioMeansJobs Center/labor exchange staff post a job directly on OhioMeansJobs.com.

Job seeker. An individual, including an unemployment insurance (UI) claimant, a veteran, a migrant and seasonal farm worker (MSFW), an individual with disabilities, or an individual who comes to the OhioMeansJobs Center or utilizes OhioMeansJobs.com to conduct their search for employment.

Labor dispute. As defined in 29 USC 152(9), any controversy concerning the terms or conditions of employment, or any controversy concerning the association or representation of individuals in negotiating, fixing, maintaining, changing, or seeking to arrange the terms or conditions of employment.

Labor exchange. A variety of employment-related services, including but not limited to, job search assistance, job referral, and placement assistance for job seekers, reemployment services to unemployment insurance claimants, and recruitment services to employers with job openings.

Fee for placement. A charge assessed to the applicant by the employer or its recruiting agency in exchange for the job opening being filled.

Staffing agency. An agency that works on behalf of a business to place workers with employers with the potential for hire by the employer.

Temporary agency. An agency that works on behalf of a business to place workers in temporary employment with no long-term commitment to hiring.

VI. LOCAL POLICY

A. Types of Unsuitable Job Orders

1. **Fee for Placements.** Local staff may not accept a job order if the employer or a staffing agency recruiting for an employer requires the applicant to pay a fee to apply for, be referred to, or be considered for employment. Universal access to basic labor exchange services will be at no cost to job seekers. Staff should help the employer understand why the order is rejected. If the employer requires the applicant to pay for materials, equipment, and uniforms or for testing and licensing, the job order may be taken as long as the required expenses are listed on the job posting. These items are not considered to be fees for placement.

2. **Independent Contractors.** The purpose of labor exchange is to facilitate employment. Job orders will only be accepted that offer employment opportunities where an employer-employee relationship exists. Typically, an employer-employee relationship does not exist if the worker is an independent contractor. Independent contractor opportunities are self-employment, which represents business opportunities, rather than employment. The individual is responsible for paying his/her own quarterly income taxes, disability insurance in lieu of Workers' Compensation, Social Security taxes, and other such costs of doing business. The determination as to whether a job opening will be for an employee or an independent contractor can be complex but is made by examining the right to control how, when, and where the person performs services. One test used to distinguish an independent contractor opportunity from a legal employment opportunity is:
 - If the employee is issued an IRS Form W-2, it is employment.
 - If the individual is issued an IRS Form 1099, it is an independent contractor opportunity. Examples representing some occupations that are usually considered independent contractors are home-based businesses (e.g., Tupperware, Amway); independent insurance agents; real estate brokers; or truck drivers who are owner/operators.
3. **Non-Bona Fide Job Order.** Staff may process bona fide job orders, however, job orders that are received to build a list of applicants for future openings are not bona fide orders and must be refused and not posted to OhioMeansJobs.com. Staff should also be alert to the possibility that a job opening or an employer may not be bona fide. Examples of questionable situations may be:
 - When an employer requires any unusual pre-employment action on the part of the applicant such as a deposit for some alleged service (e.g., transportation, purchase of equipment, dues, food, or lodging); or
 - When an unknown employer indicates that applicants will be interviewed at an address that is not a normal place of business, such as a hotel room. If staff cannot verify that the opening or employer is bona fide, the job order must be refused and must not be posted on OhioMeansJobs.com.
4. **Pre-Designation of Applicants.** When an employer requests that certain workers be referred on any basis other than an occupational qualification, the job order should be refused and not posted on OhioMeansJobs.com. For example, an employer might identify a specific individual to be referred and indicate that he or she is not willing to consider other applicants. Such requests for referrals are considered pre-designation of applicants and make a job order unacceptable. An exception to the rule on pre-designation occurs when an employer lists an agricultural job order. In this instance, the employer may request a specific crew leader or worker. Another exception would be if the employer requests that a specific person be referred and is also willing to consider other referrals. With both exceptions, the job orders should be accepted.
5. **Discrimination and Restrictions.**
 - **Discrimination:** There are various federal laws and regulations which prohibit discriminatory employment practices.
 - a) Title VII of the Civil Rights Act of 1964, 42 USC § 2000d et seq., prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, and other aspects of employment, on the basis of race, color, religion, sex, or national origin.
 - b) Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., prohibits discrimination on the basis of race, color, and national origin in

programs and activities receiving federal financial assistance, which would include most workforce development programs and services administered by ODJFS. (Refer to WIOA Section 188.)

- c) The Age Discrimination in Employment Act of 1967 prohibits arbitrary age discrimination in employment against individuals 40 years of age or older by:
 - i. Private employers having 20 or more employees and engaging in an industry affecting interstate commerce; or
 - ii. Any governmental entity.
- d) The Americans with Disabilities Act of 1990 (ADA), 42 USC § 12101 et seq., prohibits employment discrimination against qualified individuals with disabilities.
- e) Section 504 of the Rehabilitation Act of 1973, 29 USC § 794, prohibits discrimination against qualified disabled applicants in federally funded programs and services, including WIOA and OhioMeansJobs Center services (refer to WIOA Section 188).
- f) Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) which prohibits employment discrimination based on genetic information about an applicant, employee, or former employee.

The Civil Rights Act of 1964 and the Wagner-Peyser Act require that the labor exchange system ensures that discriminatory job orders are not accepted. In addition, the Civil Rights Act of 1964 prohibits the labor exchange system from providing any service to an employer when there are reasonable grounds (i.e. documented evidence) to believe that the employer is engaged in discriminatory practices.

An exception to the nondiscrimination laws is a situation involving bona fide occupational qualification (BFOQ). Examples of BFOQs would be a request for an actress to portray a female role in a play or movie, or a male attendant to serve in a men's locker room. Certain jobs have bona fide age requirements based on agility (e.g. fire fighter or police officer), legal requirements (e.g. bartender), or insurance requirements (e.g. commercial drivers). Orders with acceptable BFOQs may be written and serviced (refer to 42 U.S.C. § 2000).

Should an employer wish to list an opening containing discriminatory specifications, and a BFOQ does not exist, the OhioMeansJobs Center should advise the employer that due to the discriminatory specifications, the job order cannot be posted. If the employer is willing to change the requirements, the order may be accepted. Otherwise, the order must be refused and not posted to OhioMeansJobs.com.

- **Restrictions:** While there are a limited number of instances where the law prohibits or restricts the hiring of an ex-offender, employers are generally not allowed to have blanket bars against the referral or hiring of individuals with criminal records. Employers are permitted to consider the relationship between the conviction record and the job position itself. Hiring restrictions based on a criminal record must be "job-related" and consistent with "business necessity." Employers should consider the nature and gravity of the offense; the time that has passed; and the nature of the job before disqualifying an individual from employment based on his or her criminal record.

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6. **Credit History.** Although individuals with negative credit histories are not a protected group under the applicable federal civil rights laws, and the Fair Credit Reporting Act (FCRA) permits the use of credit reports for employment decisions, antidiscrimination laws may be implicated when credit history is used to make employment decisions. For example, if an employer screen out all workers who have a negative credit history, this may have an unequal impact on certain protected groups whose members have an undesirable credit history at a disproportionately higher rate than other groups. Staff should accept and process job orders using safeguards to prevent discrimination against individuals in protected groups based on their credit information by ensuring job orders are handled in the following manner:

- Staff should advise employers not to automatically exclude job seekers based on their credit history or any other hiring criterion unless it is job-related and consistent with business necessity. Staff should also inform employers of their obligations under FCRA, which requires employers to obtain applicants’ permission before asking a consumer reporting agency for a credit report and to provide applicants with a copy of the report and a summary of their rights before taking adverse action, such as denying employment.
- Staff should have a process, similar to the one used to identify other discriminatory language, for identifying job orders that include hiring restrictions based on credit history.
- When a job posting excluding applicants based on credit history has been identified, the staff must provide employers the opportunity to remove or edit the job order.

Any job posting containing language that excludes candidates based on credit history should be posted only if there is an explanation that the exclusion in the job posting may be unlawful under certain circumstances and there is a notification to the job seeker informing him or her that Area 2 does not prohibit individuals with negative credit history from applying for the posted position. The notification should also include how the job seeker may obtain a free copy of their credit report. Staff should forward all job seekers’ applications to employers who otherwise meet the job qualifications, despite the language in the job order excluding candidates based on their credit history.

7. **Affirmative Action.** An affirmative action job order seeks qualified applicants, particularly members of a specified group who, for non-occupationally valid purposes, have been discouraged from entering certain occupational fields. In addition, it is an order that results from:

- Executive Order No. 11246 and implementing instructions at 41 C.F.R. Chapter 60, requiring certain government contractors to take affirmative action to hire and promote qualified minorities and women; or
- Section 503 of the Rehabilitation Act of 1973 and implementing regulations at 41 C.F.R. Part 60-741 requiring certain government contractors to take affirmative action to employ and advance in employment qualified disabled

workers; or

- Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C § 4212 and implementation of regulations at 41 C.F.R. Parts 60-250 and 60-300, which requires government contractors and subcontractors to list most employment openings with an appropriate employment service delivery system. In part, requires affirmative action to employ and advance in employment qualified protected veterans; disabled veterans; recently separated veterans; active-duty war time or campaign badge veterans; and Armed Forces service medal veterans; or
- A court order resulting from a decision in which there was a finding of employment discrimination; or
- A conciliation agreement as authorized by Title VII of the Civil Rights Act; or
- Provisions of federal, state, or local fair employment practice law; or
- An affirmative action plan adopted pursuant to the Equal Employment Opportunity Commission's guidelines on Affirmative Action (29 C.F.R. Part 1608).

8. **Violations of Law.** Job orders that contain job duties or terms or conditions of employment that are contrary to law must be refused. Examples of such orders would be those specifying pay below the legal minimum wage (without the provision of earning tips), requiring the worker to perform illegal activities, or specifying hours for a youth worker in violation of child labor laws.

Staff must explain the legal basis for refusing the order to the employer and offer the opportunity for the order to be modified. If the employer agrees to an appropriate modification, the job order may be accepted. Otherwise, the order must be refused and not posted to OhioMeansJobs.com.

9. **Labor Disputes.** When a labor dispute results in a work stoppage (such as a labor strike, walkout, or lockout), staff are restricted from accepting or servicing job orders that will directly, or indirectly, aid in filling positions vacant because the former occupant is on strike, is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in the labor dispute (refer to 20 C.F.R. 652.9).

Staff may accept job orders from an employer involved in a labor dispute until a work stoppage occurs and may accept job orders during a work stoppage as long as the orders are for positions that are not impacted, either directly or indirectly, by the work stoppage.

When job orders for positions not impacted are taken from an employer involved in a work stoppage, staff are responsible for notifying any applicants referred that the employer is involved in a labor dispute and that the position listed on the job order is not vacant because of the dispute. Staff are encouraged to include this information in the job description of the job order.

Once a labor dispute resulting in a work stoppage has been resolved, staff may once again resume full service to the employer (refer to 20 C.F.R. 652.9).

Staff should be alert to labor disputes that are developing in their areas and are encouraged to contact the Area 2 WDB office with information on any such disputes. This will help facilitate timely notification of all impacted areas should a work stoppage occur.

10. **Membership or Non-Membership in a Labor Organization.** Orders specifying membership or non-membership in a labor organization as a condition of being hired may be in violation of law if the employer is subject to the Labor-Management Relations Act of 1947 (Taft-Hartley Act). (Refer to 29 U.S.C. § 158(a)). If the job order is in violation

with this law, the job order must be refused and not posted on OhioMeansJobs.com. However, if the employer requires an employee to join a labor organization on or after the 30th day of employment, and this requirement is pursuant to the employer's agreement with the labor organization, the job order would not be in violation of the Act and should be accepted. In the case of the building and construction industries, the requirement to join a labor organization may be on or after the seventh day of employment (refer to 29 U.S.C. § 158(a)(3)).

11. **Staffing and Temporary Agencies.** Both staffing and temporary agencies may use the self-service functionality of OhioMeansJobs.com for job posting and resume searches, as well as other features such as the training center, workforce program locator, etc. Any posting by either a staffing or temporary agency must be for a current and valid job opening.
 - Staffing Agencies: Based upon their working relationship, staffing agencies and OhioMeansJobs Centers may partner and coordinate their work efforts for job posting and resume searches. In doing so, staff should be alert to whether job orders from staffing agencies are current and valid job openings and are not for the purpose of building lists of applicants for future openings. Furthermore, staff should also make certain that the job orders are not a duplicate order listed by an employer that the staffing agency may be representing.
 - Temporary Agencies: If a temporary agency working on behalf of an employer contacts the OhioMeansJobs Center for assistance, staff can assist the temporary agency by demonstrating the self-service functionality of OhioMeansJobs.com. It is expected that the temporary agency will complete their own job postings, resume searches, and other services within OhioMeansJobs.com without the assistance of staff.
12. **Casual Labor.** Workers performing casual labor are either independent contractors or employees. An example may be someone who was hired for one day to clean the windows of a business or a group that is hired for a few hours to unload new office furniture. The hiring company's legal obligations to workers performing casual labor are the same as for other workers. Therefore, staff should be careful to verify an employee-employer relationship and not a posting for an independent contractor.
13. **Substandard Job Orders.** A job order should be considered substandard when an employer is offering wages or hours that are below the standard in a labor market for a particular type of work. Staff should be aware of local labor market information (LMI) sources that report information such as average wage by occupation and location to determine what job orders are to be considered substandard. Staff may use <http://ohiolmi.com/> or <https://www.onetonline.org/>. If a job order is considered substandard, staff should provide the employer with appropriate labor market information and offer him or her opportunity to modify the job order. If the employer agrees to an appropriate modification, the order should be accepted and posted on OhioMeansJobs.com. If not, staff must inform the employer that staff cannot post the job order and that the employer will have to post the job order using self-service OhioMeansJobs.com.

B. Refusing, Discontinuing, or Limiting Services to an Employer

Local staff may refuse or discontinue services to an employer if the employer or the job orders meet any of the conditions for refusal specified in Section VI, A of this policy, or if the employer refuses to cooperate with the local staff's requests for job order verification.

VII. MONITORING

Area 2 is responsible for setting local standards for the quality of job orders obtained and processed, and ensuring these standards are met. The local standards include:

1. The job order is legal and allowable under the law, regulations or policies governing labor exchange activities.
2. The job order has complete and accurate data including location of the employer, how to contact the employer, O-Net code, hours, and duration of the job.
3. The job order contains sufficient information for job matching including job title, required skills, secondary skills, pay information, and a description of duties.
4. The job order contains a job description that can be viewed and understood by the job seeker.
5. The resume search folder in OhioMeansJobs.com contains documentation of the qualified veterans identified in the resume search and referred to the employer.
6. The resume search folder in OhioMeansJobs.com contains documentation of regular follow-up contacts with the employer including referral verification contacts.
7. The resume search folder contains timely results of referrals.

VIII. REFERENCES

1. WIOA Public Law 113-128
2. ODJFS WIOA Policy Letter 24-03 Guidelines for Conducting Labor Exchange Activities
3. ODJFS WIOA Policy Letter 17-01 Mandate Use of OhioMeansJobs.com for Job Placement and Referral Activities in Ohio