

EMPLOYMENT SERVICES POLICY GUIDANCE

This policy guidance does not contain any new law, but is agency interpretation of existing law, except as authorized by law or as incorporated into a contract.

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EMPLOYMENT SERVICES DURING LABOR DISPUTES (02-11-19)

POLICY (WIOA, Labor Final Rules, 652.9)

It is department policy that during a labor dispute all IDOL staff remain impartial when dealing with employers, employees and their representatives involved in the matter. Under no circumstances are staff to express an opinion as to the merits of a labor dispute, nor are any recommendations or decisions to be made or influenced by the merits of a labor dispute. The department's only interest in a labor dispute is in how it affects the department's ability to provide employment services. Information received by the department in the course of labor dispute fact-finding is confidential employment security information and may only be used in department operations.

DEFINITION

Labor Dispute:

The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." (NLRA, 29 CFR Ch.7 Sub Ch. 2, Sec. 2(9).)

RESTRICTIONS ON EMPLOYMENT SERVICES

Local offices shall make no job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

Local office management should notify their area manager immediately of the existence of a labor dispute resulting in a work stoppage at an establishment involving a significant number of workers or involving multi-establishment employers with other establishments outside Idaho. The area manager shall notify the Workforce Programs Manager in the Administrative Services Division of the dispute, who will notify the USDOL Regional Office of the development.

If a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage the following actions must be taken:

Verify the existence of the labor dispute by communicating with the employer and the workers' representative(s)/local labor organization, and determine its significance with respect to each vacancy listed in the job order. The following information must be obtained regarding the matter:

1. A statement of the cause of, or basis for, the dispute;
2. A list of the specific positions, crafts, trades, or jobs affected by the dispute (include union name and local number);
3. The name of the government agency (State or Federal), if any, concerned with the adjustment of the dispute;
4. Name of employer(s);
5. Date dispute started;
6. Location(s) of dispute.

Notify all potentially affected One-Stop partners concerning the labor dispute; Provide written notification to all job seekers referred to jobs openings not at issue in the labor dispute, "A labor dispute currently

exists at this employing establishment. This notice serves as written notification that the position you are being referred to is not at issue in the dispute.”

Local offices shall resume full referral services when they have been notified of, and verified with the employer and workers' representative(s), that the labor dispute has been resolved/terminated. LO staff must request written verification from the labor group or bargaining representative to verify the end of the dispute. The verification should then be forwarded to the area manager and the Administrative Services division to apprise them of the resolution and resumption of services.

RESTRUCTURING SERVICES TO JOB SEEKERS (Discontinuation of in-person services) (02-11-19)

Because our services are publicly funded and universally accessible, the restructuring or discontinuation of in-person services to job seekers is a serious issue. Most customer issues can be addressed by staff intervention, bringing awareness of and reinforcement of the rules and expectations. Therefore, unless the situation poses a potential imminent threat to the safety of staff or others, or creates a hostile, unsanitary or significantly disruptive environment, action to restructure services will only be taken after other corrective action has been unsuccessful.

If at any time staff fear for their safety or the safety of others the police should be called immediately. The Local Office Manager will notify the Area Manager whenever such an emergency occurs.

BASIS FOR RESTRUCTURING OR DISCONTINUATION OF IN-PERSON SERVICE

Job seekers and employer customers are expected to conduct themselves in a manner that does not disrupt the Local Office, threaten staff or other customers or adversely affect the ability of Local Office staff to provide quality services to all its customers. Some examples of customer behavior that may require a Department response are:

1. Disruptive Behavior: Behavior that disrupts the working environment of a Department of Labor office. Disruptions may include, but are not limited to, customers who lose their temper or who engage in fighting, excessively loud conversation, shouting, unruly behavior, or refusal to follow reasonable instructions from staff. This also occurs when customers confront others inside IDOL offices, or outside IDOL offices in a way that impedes entrance into or out of IDOL offices.

2. Threatening or Intimidating Behavior: Verbal abuse, intimidation, harassment, coercion or any other type of menacing behavior which threatens, or is perceived to threaten, the physical safety of staff or others. This includes in person, by phone, by email, and by social media.

3. Using Offensive or Abusive Language: Using coarse, vulgar, rude, offensive, threatening, harassing or disrespectful language or gestures with the intent of embarrassing, intimidating, or humiliating staff or others.

4. Loitering: Spending idle time or lingering at IDOL entrances or in IDOL lobbies, restrooms, walkways or parking lots.

5. Misusing Department Resources: Any abuse or misuse of Department computers, telephones, copiers, fax machines or any other Department resources. With regard to computer resources, it includes, but is not limited to, the unauthorized entry into, alteration of, or transfer of files; the unauthorized use of, access to, or control of computing resources; the attempted or actual use of another person's account, identification or password; the attempted or actual unauthorized copying, transfer, modification, or destruction of Department software, programs, records or data; the attempted or actual interference with the normal operation of the Department's computers or its computing system. It includes the use of Department resources for personal, non-job-related purposes, or the use of Department resources to make threats or to send messages containing offensive or abusive language.

6. Engaging in Criminal Activity: When criminal activity occurs, including, but not limited to, an assault or battery against staff or the public, trespass, destruction of property, or vandalism, law enforcement must immediately be notified and provide assistance with any investigation. Local law enforcement can also address any immediate safety risks to staff and others.

7. Possessing or Using Alcohol or Illegal Drugs on Idaho Department of Labor office Premises: Local law enforcement must be notified.

PROCEDURES

If the Local Office Manager determines that services need to be restructured or discontinued, the Local Office Manager will notify the Area Manager (or the Workforce Program Operations Manager) of the situation for approval by the Area Manager to take further action. With the Area Manager's approval, documentation of the inappropriate conduct will be forwarded to the Workforce Program Operations Manager. That documentation must describe:

1. The customer's name, Social Security number, Idaho Works Part ID and the services received or requested from the Local Office.
2. The inappropriate conduct in specific detail, including all supporting documentation from witnesses and the complaints made by staff and employers.
3. Information about any attempts to advise the customer about the inappropriateness of the behavior, or other actions taken by the local office, and the results.

The Workforce Program Operations Manager will review the documentation with the Area Manager and legal staff to determine the Department's response.

If the Department determines that services need to be restructured, the Workforce Program Operations Manager will send written notice to the customer. The notice will inform the customer that the action taken will be effective immediately and give the customer 10 days to file a written protest. If no written protest is received within the time allowed, the Department's decision will become final.

If the customer files a written protest within the time allowed, the Department will appoint a hearing officer and schedule a hearing.

Written notice of the hearing will be mailed to all interested parties at least 7 days prior to the hearing. The notice shall include the date, time, place of the hearing. The Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. The Parties may be represented by an attorney or another designated representative, and may request that records and

documents be produced. All testimony shall be taken under oath or affirmation. The hearing shall be recorded. The hearing officer's recommended resolution shall include a summary of the factual evidence given during the hearing and the conclusions upon which the recommendation is based.

The Department will review the recommendation of the hearing officer and issue a final agency decision.

Services may be restored, either partially or fully, when the customer whose services have been restructured or discontinued demonstrates to the Department's satisfaction that the inappropriate conduct will not reoccur.

MIGRANT AND SEASONAL FARM WORKER (MSFW) (02-11-19)

MSFW is defined as an agricultural worker who currently or in the last 12 months worked a seasonal or migrant farmworker. Federal regulations require states have a means for local offices:

- 1) To identify MSFWs according to most recent definition found at 20 CFR 651 and provide services that are qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs
- 2) To operate an Outreach Program to locate and contact MSFWs who are not reached by the normal intake activities conducted by local offices
- 3) To establish a system to monitor the agency's compliance with ES regulations related to MSFW.
- 4) To collect and report data on registrations and services provided to MSFWs

MSFW SERVICES PROGRAM POLICY

Each local office must offer to migrant and seasonal farm workers (MSFWs) the full range of career and supportive services, benefits and protections, including the full range of counseling testing, and job and training referral services as are provided to non-MSFWs. In providing such services, State agency staff shall consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

Each local office will ensure that MSFWs that are English Language Learners receive free of charge the language assistance necessary to afford them meaningful access to services and programs and will provide them a list of available career and supportive services in their native language.

MSFW OUTREACH PROGRAM POLICY

Idaho Department of Labor's (IDOL) specific policy regarding outreach is that:

- A. The agency will operate an Outreach Program in order to locate and contact MSFWs who are not being reached by the normal intake activities conducted by the local offices. The Outreach Program will be operated so that it supports and directly contributes to the placement operation of the local office.
- B. Outreach efforts will be coordinated with the Community Council of Idaho (WIOA 167 grantee) and wherever feasible with other public and private community service agencies and MSFW groups.

- C. Idaho Department of Labor will make sufficient penetration in the farm worker community so that a large number of MSFWs are aware of the full range of Employment services and will use different types of appropriate media to reach farmworkers
- D. Idaho Department of Labor's significant MSFW local offices should conduct especially vigorous outreach in their service areas consistent with staffing levels provided.
- E. A list of significant bilingual MSFW local offices for the current program year can be found on the MSFW page in EPIC.
- F. Outreach workers will invite MSFWs to visit the local office and will communicate to farmworkers in a language understood by them, all services available at the local office, explain the complaint system, provide information on services available in the community and provide a summary of workers' rights including rights concerning terms and conditions of employment
- G. Outreach workers will make services available on site such as registrations, job referrals, filing complaints, filing apparent violations and assistance arranging transportation
- H. An IDOL agricultural outreach plan will be developed and submitted every 4 years with annual revisions and updates, according to requirements contained in 20 CFR 653.107

MSFW MONITORING POLICY

- A. The local office manager or their designee are required to monitor compliance with the requirements of the MSFW programs in their office. Periodically they evaluate whether or not their office is meeting the equity indicators and minimum service indicators that address ES controllable services and take appropriate action to address any deficiencies. The equity indicators include individuals referred to jobs, receiving job development and referred to supportive or career services. The minimum level of service indicators include individuals placed in a job, placed in long-term non-agricultural jobs and outreach contacts.
- B. The State Monitor Advocate must conduct an ongoing review of the delivery of services and protections afforded to the MSFWs by the IDOL and its local offices and must advise them about problems, deficiencies and improper practices,
- C. The Monitor Advocate will ensure that all significant MSFW offices not reviewed onsite by the federal team, are reviewed at least once per year and that those offices in which significant problems are revealed by reports, are reviewed as soon as possible
- D. The Monitor Advocate will request a corrective action plan from the local offices and advise IDOL and its local offices on ways to improve the delivery of services.
- E. The Monitor Advocate must: participate in federal reviews, review and approve the agricultural outreach plan and participate in and monitor the performance of the complaint system.

MSFW DATA COLLECTION AND REPORTING POLICY

- A. IDOL must collect career service indicators data for the career services specified in WIOA sec. 134(c) (2) (A) (xii) and collect data in accordance with applicable ETA reports and guidance.
- B. IDOL must disclose to the public according to state and federal law, the data collected by IDOL and its local offices
- C. In disclosing the information, IDOL will adhere to existing IDOL records request policy.

D. Local offices will report customer services by entering information in each individual file in IdahoWorks

E. Local office will report outreach contacts by entering ongoing outreach activities in the Outreach Services Report located in EPIC

F. IDOL's Foreign Labor Certification Specialist will submit a report on H-2A Job orders and housing inspections to the State Monitor Advocate,

G. The Monitor Advocate will work with the SharePoint team and the Idaho Wage and Hour Director to obtain required data on complaints.

H. The Monitor Advocate will submit local office MSFW review reports to the IDOL Director and other individuals with authority over the local offices.

I. The Monitor Advocate will write an annual summary according to 20 CFR658.108 (s) adhering to ETA guidance and format. The summary report will be submitted to the IDOL Director and the Regional and National Monitor Advocates.

RESEA (02-11-19)

Reemployment Services and Eligibility Assessment (RESEA) is a federally mandated program that identifies job seeking unemployment insurance claimants who are likely to exhaust their benefits. The identified individuals are required to come into a local office and meet with staff who then help these job seekers get back to work by use of an assessment and developing an individual service plan.

The RESEA program is a joint effort run by Unemployment Insurance Benefits and ES local office staff. LO staff have the direct contact with the claimants. Local Office staff set the appointments, provide the services and record the services provided to these customers.

All RESEA participants should have full IdahoWorks registration noting their RESEA status and staff should record appropriate services and demographics in their Job Service enrollment

THIRD PARTY RECRUITERS AND PROFESSIONAL EMPLOYER ORGANIZATIONS (02-11-19)

THIRD PARTY RECRUITERS– The relationship between the employer and 3rd Party is contractual in nature; the employer retains the third Party employer to recruit employees who then post and manage job orders on the employer's behalf. Workers are an employee of the employer and not the third Party recruiter. Job orders are listed under the employer's name in IdahoWorks.

If we are contacted by someone who is representing an employer as a third party, or we become aware that a third party is working on the behalf of an employer, and they will be entering and managing job listings and/or managing referrals, we must then have written confirmation letter (see below) from the employer stating that the third party is doing so with their permission. This includes legal entities representing employers filing for labor certification.

PROFESSIONAL EMPLOYER ORGANIZATION (PEO) –The worksite employer and the Professional Employer Organization (PEO) enter into a co-employment arrangement typically involving all of the client’s existing worksite employees. The PEO takes on the employee management tasks such as recruiting, payroll and workers compensation, employee benefits, training and development. Workers are then employees of both the worksite employer and PEO. The PEO is the employer of record for tax and insurance purposes and many times the tax ID number for the worksite employer will be the same as the PEO. Job Orders are typically listed under the employer’s name in IdahoWorks. Generally smaller employers (e.g. <50 employees) are the ones that will contract with a PEO and one PEO may partner with multiple different employers.

If we are contacted by someone who is representing an employer as a PEO, or we become aware that a PEO is working on the behalf of an employer, and they will be entering and managing job listings and/or managing referrals for the employer, we must then have written confirmation letter from the PEO or from the worksite employer describing the relationship between the two businesses.

THIRD PARTY AND PEO CONFIRMATION LETTERS

1. The letter must be on company letterhead and must include the date, client-employer (or PEO) tax ID number, identify the employers, and include the contact information of the letter’s author.
2. Letters may sent as an attachment in an email but must be in PDF or Word/Rich Text form; if letters are mailed to us they must then be scanned into a PDF document.
3. The letter must be added to the list of documents found on the Third Party Authorization page in EPIC.
4. A note describing the employer partnership must be added to the notes section of the employer record.
5. Letters will be reviewed after one years’ time. Upon the anniversary date, staff will verify with the client-employer (or if applicable, the PEO) that the partnership is still valid and add notes to that effect on the employer account.

ACCOUNT IDENTIFICATION

When creating a new employer account or updating an existing account for a 3rd Party or PEO, it should be written using the actual employer’s name and address and not the name/address of the contracted party. However, when applicable the referral instructions and contact information on the job order itself may reflect the contracted employer’s information. When applying on a job listing the job seeker may, but not always, be first directed through the third Parties or PEOs website.

ACCOUNT LOGONS

In IdahoWorks, if the employer wishes the third Party Employer or PEO to have online access to their account, it is the employer’s responsibility to share their logon information with them. Staff will NOT give out the logon information or assist a 3rd Party or PEO in accessing a client-employer account.

DISCONTINUATION OF SERVICES TO EMPLOYERS (02-11-19)

Federal regulatory requirements at 20 CFR 658 Subpart F require that ES services be discontinued to employers who:

- A. After final determination by an employment-related law enforcement agency (i.e., OSHA; ESA, etc.), or the Job Service (Idaho Department of Labor), have been found to be in violation of such laws; or
- B. If, in the judgment of the Director, any delay would cause substantial harm to a significant number of workers and services should be discontinued immediately.

BASIS FOR DISCONTINUATION OF SERVICE

Conditions identified in 20 CFR 658.501(a)(1) through (8) as the Basis for Discontinuation of Services to Employers. These conditions are listed in numbers (i.e. 1, 2), etc.) below, followed by the steps (listed in letters, i.e. a., b., etc.) to initiate discontinuation based on violations of each condition.

An employer:

1. Submits and refuses to alter or withdraw job listings contrary to employment-related laws;
2. Submits job listings and refuses to provide assurances that the jobs are in compliance with employment-related laws, or to withdraw them;
 - a. If an employer has submitted a job listing which has conditions or requirements contrary to employment-related laws and refuses to alter the job listing, the local office manager shall write the facts of the discussion with the employer and send it with a copy of the job listing in question to the Administrative Services Division.
3. Misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job listings;
 - a. When an employer has been found to be in violation of a regulation, has been notified of the violation and remedy, and has failed to comply within the time period set (5 business days), the Administrative Services Division will refer the violations to the appropriate enforcement agency. In the case of H-2A listings, the Alien Labor Certification Specialist (ALC) will review all Field Check Reports to determine if the employer has been notified of all violations and given appropriate remedy within the time period. The ALC Specialist will refer the violations to the appropriate enforcement agency.
 - b. When a participating employer may not have complied with the terms of its temporary labor certification (H-2A and H-2B programs), the state must engage in the procedures for discontinuation of services to employers pursuant to paragraphs 1) through 8) of this section and simultaneously notify the Chicago National Processing Center (CNPC) of the alleged non-compliance for investigation and consideration of ineligibility for subsequent temporary labor certification.
4. Violates any employment-related laws based on a final determination by an appropriate enforcement agency;
5. Violates IDOL/ES regulations, as determined after investigation;
- 5) Refuses to accept qualified workers referred through the clearance system;
 - a. When a complaint determination has been issued by an enforcement agency and notified the central office, or the central office (ex. refusal to accept qualified workers would be brought forward either as a JS complaint or an apparent violation) has issued a Complaint determination, and the respondent has not satisfied the remedy of the complaint, the complaint case shall be forwarded to the staff person responsible for initiating Discontinuation of Service by the Complaints Investigator.

6. Refuses to cooperate in the conduct of field checks, in accordance with 653.503; (field checks at agricultural work sites to which Job Service placements have been made through the intrastate or interstate clearance system); or,
 - a. The local office staff being refused admittance would return the Field Check forms with a description of the facts regarding the refusal to the ALC Specialist. The ALC Specialist would forward the report to the staff responsible for initiating Discontinuation of Service.
7. Repeatedly causes the initiation of procedures of Discontinuation of Services on any of the issues noted in 1) through 7) above.
 - a. A report from anyone who has been part of the processes which could cause discontinuation of service may be submitted to the Administrative Services Division. Staff familiar with the cases will determine if cause exists to initiate the process to discontinue services.

IMMEDIATE DISCONTINUATION.

An employer whose working conditions or non-compliance with employment-related laws may lead the IDOL Director to believe that substantial harm could come to a significant number of workers. The Director's authority allow him/her to discontinue service immediately without official notification requirements or hearing provisions.

- a. Conditions identified under 20 CFR 658.501(b) gives the Director the authority to discontinue service immediately without going through the notification requirements and provisions for hearings. Substantial harm could mean physical, emotional, or financial distress. Each case and situation must be addressed independently as they occur. Significant number of workers will also vary with the circumstances.

PROCEDURES TO IMPLEMENT DISCONTINUATION OF SERVICES

In all cases, the employer will be notified via a Certified Return Receipt letter from the Director stating that the IDOL intends to discontinue the provision of services and the reasons for this action. The employer's due process allows them a limited period to request several options for reinstatement:

- a. To provide documentation contesting the reasoning behind the discontinuation or
- b. To request a hearing to do the same.

Based on the outcome of either option, discontinuation may continue or reinstatement could occur.

1. A local office may request that immediate action take place if warranted through a written justification submitted to the Administrative Services Division unless there is already sufficient evidence and documentation present in the Central Office. The local office may be asked to supply additional information after initial review.
2. If sufficient cause is determined by consensus with the Legal Bureau, the employer will be notified and advised how reinstatement could take place.
3. Administrative Services staff responsible for initiating Discontinuation of Service will prepare a certified, return receipt letter for the director notifying the employer that the IDOL intends to discontinue the provision of services and the reasons (see Basis above) for this action.
 - a. The notification must include the following information:

- i. The specifics of the job listing(s), the date(s) submitted, and the subject specification(s), missing assurance or violation;
 - ii. The specific finding/determination of the alleged violation;.
 - iii. That services to the employer will be discontinued in twenty (20) working days from the date of receipt of notification unless the employer appeals for reinstatement, utilizing one of several appeal options described later in this section.
4. If the employer requests reinstatement and is denied, the employer will be offered the opportunity for a hearing.
5. A job listing may be placed on hold and not served pending investigation after which certain terms and conditions would be included in the listing before it is determined to be acceptable. This is to be done by the Administrative Services Division upon advice, consent and discussion with the Legal Bureau and the Local Office Manager. Notification of the employer will be done by either the local office or Administrative Services Division, at the option of the local office.
6. A listing may also be considered substandard, and local office staff would then advise applicants of the allegations prior to referral. To determine that a listing is substandard, a request could be made to the Administrative Services Division and a decision made after consultation with the Local Office Manager, the Legal Bureau and any other unit or agency that may have jurisdiction over the alleged violations. A substandard job listing is one that offers wages, hours or conditions of work substantially below the standard of the community.

EMPLOYER APPEAL OPTIONS

Section 658.502 of the regulations details options available to employers for each of the basis for Discontinuation of Service. Within 20 days of receipt of the notification of Discontinuation of Services, an employer may select one of three options to appeal the determination:

Present documentary evidence to contradict the State agency finding that a violation has occurred. Evidence, for example, that the terms and conditions of a job were not misrepresented; or that the assurances were complied with fully; or that restitution was made; that referred workers were not qualified; and so forth.

Provide documentary assurances that everything will be corrected and there will be no future difficulties. For example, the employer provides assurances that future job listings will comply with employment-related law; that future listings will contain all necessary assurances and accurately reflect the terms and conditions of the job; that referred workers will be accepted in the future; and so forth.

Request a Hearing. The option to request a hearing following notification is available in all but two cases:

- when discontinued services result from a final determination by an enforcement agency;
- when discontinued service is based on an employer's causing repeated initiation of procedures. In this case not only is there no hearing option, there are no options at all. Services are simply discontinued.

Utilize other options specific to the respective basis that caused Discontinuation of Service procedures to be initiated.

If the employer fails to provide appropriate evidence or assurances following the notification within twenty (20) working days, or has not requested a hearing, the staff responsible for Discontinuation of Service will prepare a letter for the director to terminate services to the employer immediately. All local offices will be notified of the action by e-mail. No local office may provide any ES services to an employer who has had service discontinued.

If services are discontinued to an employer subject to Federal Contractor Job Listing requirements, Administrative Services staff will notify the ETA regional office immediately.

REINSTATEMENT OF SERVICES

Services may be reinstated to employer(s) after Discontinuation of Services as set forth in 20 CFR 658.504, if:

1. The State is ordered to do so by the Regional Administrator or a Federal Administrative Law Judge (ALJ).

2. The State Administrator accepts the employer's presentation or submittal of facts, which includes:

- a. documentary evidence that any policies, procedures or conditions which led to the discontinuation of services have been corrected and are not likely to reoccur in the future;

- b. documentary evidence that the employer has responded adequately to local office or state office or enforcement agency findings, as the result of a Job Service complaint, including restitution to the complainant and/or payment of any fines, which were the basis of the Discontinuation of Services.

3. By order of a State Hearing Officer, Regional Administrator or Federal Administrative Law Judge following a hearing or appeal of the State Agency's refusal to reinstate services owing to the alleged inadequacy of the evidence presented by an employer.

JOB FAIR / HIRING EVENT GUIDANCE (02-11-19)

Employers participating in Department sponsored job fairs must have an employer account in IdahoWorks – whether they create it or it is staff-assisted. If they have only a NLX account, a new staff-assisted or self-entered account must be created. This is critical so we can record the services we provide to the employer as they participate in the job fair. While staff should encourage employers to list their job openings in IdahoWorks when they are participating in a department sponsored job fair, it is not a requirement of their participation.

Employers who are located out of state and recruiting for permanent, out of state openings (e.g. outside of common labor market areas) may not participate in Department sponsored job fairs, unless approved by Workforce Admin. Employers in border communities or those who have a physical presence in Idaho and employ people in Idaho may participate in job fairs even if their current openings are in other locations outside of Idaho. Likewise, it is permissible to allow employers recruiting for Alaskan fishing and crabbing jobs, and oil refinery work in North Dakota to participate in a job fair or hiring event, as these jobs are short-term positions; job seekers working for these employers will, in most cases, be retaining their homes in Idaho.

JOB LISTINGS FROM EMPLOYERS LOCATED OUTSIDE LABOR MARKET AREA (02-11-19)

There are several regions in Idaho where the local office labor market area includes communities in neighboring states. Employers from these bordering communities are served as if they are located within the State. Local office managers in those areas are responsible for establishing cooperative relationships with the nearby local offices in the other state.

Examples of our common labor markets such as Spokane, WA; Pullman, WA; Clarkston, WA; Ontario OR; Jackpot, NV; and Jackson, WY, etc.

When an out-of-state employer contacts a local office with job openings located outside of the Idaho or one of our common labor market areas, the job listing should not be taken with the exception of temporary or seasonal job listings for positions out of state, such as fishing and crabbing jobs in Alaska and oil refinery jobs in North Dakota as these are seen as short-term positions. Job seekers working for these employers will, in most cases, be retaining their homes in Idaho. Inform the employer to get in touch with their local American Job Center office. A list of other states' Employment offices can be found at <https://www.labor.idaho.gov/dnn/AboutUs/Other-States-Employment-Services>

Telework jobs where the employer is located outside of Idaho but employee can work remotely from Idaho are acceptable.

NOTE: Local offices need to be aware of the possibility that the employer is out-of-state but moving into the local area (or has job openings in the local area). The local office will want to work with an employer who is moving into their area. Local office managers may have some insight into this situation and should be contacted to confirm the possibility.

JOB LISTINGS – LEGAL TOPICS (02-11-19)

FEDERAL CONTRACTORS JOB LISTINGS

Businesses who contract with the federal government may be required to post their job listings in order to comply with federal compliance requirements. LVERs should be contacting those Federal Contractors, as appropriate, to offer veterans for their hiring opportunities.

[USDOL VETS website for Federal Contractors](#)

UNION REQUIREMENTS AND IDAHO RIGHT TO WORK LAW

Idaho is a Right-to-Work state, which means that an employer, including federal contractors, cannot require that a worker be part of a union in order to be hired or to retain employment for a job where the worksite is located in Idaho. If an employer, whose worksite is in Idaho, does not hire someone or fires an employee for not joining a union, they would be liable under Idaho's Right to Work law:

<https://legislature.idaho.gov/statutesrules/idstat/title44/t44ch20/>

However, there is an exception to this requirement. The 'Federal Railway Labor Act', ([US Code Title45 Chapter 8](#)) supersedes Idaho's Right-to-work laws in regards to union requirements. Railroad job postings in IdahoWorks may require union membership as a condition for hire.

In addition, it is important to note that it is permissible to post other, non-railroad affiliated jobs that require union membership as long as the job site location is in a state without a Right-to-Work law. Of our neighboring states, currently Washington, Oregon and Montana do not have right-to-work laws. A list of Right-to-Work states can be found [here](#). When posting these types of jobs, the job description should identify that union membership is necessary in order to be hired or to retain employment with the employer.

AFFIRMATIVE ACTION JOB LISTINGS

Affirmative action means positive, result-oriented action imposed on or assumed by an employer pursuant to legislation, court order, consent decree, directive of a fair employment practice authority, government contract, grant or loan, or voluntary affirmative action plan adopted pursuant to the Affirmative Action Guidelines of the Equal Employment Opportunity Commission to provide equal employment opportunities for members of a specified group which for reasons of past custom, historical practice, or other non-occupationally valid purposes has been discouraged from entering certain occupational fields. (20 CFR Ch. V, Part 651.10)

Most federal government contractors, many subcontractors, and state and local government agencies must have an Affirmative Action Program. Under these programs, employers must reach certain goals for employing and upgrading minorities, females, persons with disabilities, and disabled and Vietnam-era veterans. TO BE ACCEPTED, AN AFFIRMATIVE ACTION JOB LISTING MUST RESULT FROM A COURT ORDER, THE PROVISIONS OF A GOVERNMENT CONTRACT OR A VOLUNTARY PLAN ADOPTED PURSUANT TO GUIDELINES OF THE EEOC. DOCUMENT THE AUTHORITY ON THE JOB LISTING either in the Job description field or on the Note Page.

a. A bona fide affirmative action listing seeks qualified applicants, particularly applicants who are members of a specified group, which for reasons of past custom, historical practice or other non-occupationally valid purposes have been discouraged from entering certain occupational fields.

b. Local offices must provide veterans' priority of service on all job referrals, regardless of other requirements for affirmative action. Disabled veterans receive first priority.

c. In responding to affirmative action job listings, do not make exclusive referrals of members of any one group when other qualified applicants are available. Do not deny any qualified applicant referral because that person is not a member of the group identified in the affirmative action job listing. Do continue to refer only qualified applicants to the job. If applicants from the requested group are not readily available, make special efforts to recruit the requested group members from the community.

d. Local offices must clearly mark each affirmative action listing to reflect the employer's need. For example, if the employer requests members of specific groups, such as minorities, include the following statement in the Job Description field on the listing:

"Affirmative Action - all qualified applicants will be considered. Minority individuals are encouraged to apply."

In cases where the employer requests "any" of the protected groups rather than a specific group use the statement, "all protected groups are encouraged to apply."

e. Occasionally, the local office may make special efforts to assure that the requested group(s) is/are represented among qualified veterans and other applicants referred. Special recruitment efforts can be taken by the local office to locate applicants. However, employers' affirmative action goals should not be equated with a "quota" for specified groups. To assist placement staff in including qualified applicants from the requested group(s), we should encourage the employers to:

1. Allow a larger than normal number of referrals.
2. Keep the listing open long enough to do call-in recruitment.
3. Ensure that selection criteria are related directly to the tasks to be performed. Eliminate unnecessary educational or experience requirements that may screen out certain groups.
4. Understand that the local office is required to refer all interested qualified applicants, but will make every effort to include applicants from the requested group in the referrals.

BONA FIDE OCCUPATIONAL QUALIFICATIONS (BFOQ)

A Bona Fide Occupational Qualification (BFOQ) means that an employment decision or request based on age, sex, national origin or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an exception to the general prohibition against discrimination on the basis of age, sex, national origin or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR parts 1604, 1605 and 1627. (20 CFR Ch. V, Part 651.10)

It is illegal and against agency guidelines to service any illegally discriminatory job listing. Employers cannot discriminate in employment on the basis of race, color, sex, religion, age (40+), national origin or disability. However, exceptions are made for bona fide occupational qualifications (BFOQs) reasonably necessary to satisfy a particular business need. State and Federal enforcement agencies interpret BFOQs very narrowly and take the position that employers must prove a necessity for any exception.

The Job Description field of the job listing must reflect the basis for the BFOQ. The permanent or official entry (the computer into IdahoWorks) must contain this information, without exception.

Listed below are examples of requirements that ordinarily may establish a basis for a BFOQ exception. If local office staff questions the legality of any job order's BFOQ, they should immediately contact their supervisor or Workforce Administration for assistance.

a. Sex

For reasons of authenticity such as actor, actress, or model or for maintaining conventional standards of personal privacy when the need for such privacy is a major part of the job and the job cannot be restructured (e.g. locker room attendant, personal attendant, etc.)

b. National Origin or Citizenship

For reasons of national security. Some federal positions require U.S. citizenship.

c. Religion

For the referral of a person of a specific religion to a religious corporation, association, educational institution, or society of the same religion when the job opening is for the propagation of that particular faith.

d. Age

In state, federal, or local programs where age is a requirement of the program, such as a Summer Youth Program, Job Corps, or designated WIA project, etc.;

OR

Under Federal law, 21 for drivers subject to Interstate Commerce Commission (ICC) regulations. This excludes vehicles meeting "lightweight vehicle" definitions, but includes vehicles being driven interstate when the driver is paid for transporting passengers;

OR

Actors or actors for youthful or elderly characteristics or roles;

OR

Age 19 or over to serve alcoholic beverages;

OR

Age 18 or over to sell lottery tickets.

e. Race.

To refer an American Indian to work on or near an Indian Reservation. There are no other recognized BFOQs for race or color.

f. Language.

For example, English language may be required for safety reasons. However, Idaho Department of Labor staff may not screen any individual for this purpose. See English language requirement later on in this document.

Additional information about discriminatory employment practices is available at the Idaho Human Rights Commission web site <https://humanrights.idaho.gov/>

COMMISSION ONLY JOB LISTINGS

Job listings where pay is 'commission only' are permissible as long as the total compensation of at least Idaho minimum wage for any hours worked or time spent in training is guaranteed by the employer. However, commission sales do not have to guarantee minimum wage if it is an outside sales job, but there must be an employer/employee relationship and the employee must be customarily and regularly engaged away from the employer's place(s) of business in performing the employee's primary duties.

DISABILITY

The American with Disabilities Act (ADA) specifically prohibits the documentation of an applicant's disability on an application and before making an offer of employment, an employer may not ask job applicants about the existence, nature or severity of a disability.

JOB LISTINGS IN VIOLATION OF LAW

If an employer enters or requests a job listing containing terms or conditions of employment contrary to law, explain why Idaho Department of Labor cannot accept the job listing and which laws the job listing would violate. If the employer changes the illegal requirements to meet the law, accept the job listing and provide services. If the employer will not withdraw the illegal request, do not accept the job listing. Notify the employer that we cannot take the job listing, document the specifics of the illegal requirements and take that information to the local office manager.

UNACCEPTABLE JOB LISTINGS

1. Do not accept job listings when services have been discontinued to that employer.
2. Do not accept job listings from any employer when the services to be performed or conditions of employment are contrary to law or regulation.
3. Do not accept a job listing from a private employment agency if the applicant is charged a fee.
4. Do not take a job listing that will directly or indirectly fill a job opening that is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute.
5. Do not accept a job listing from an employer who is only building a list of applicants for future use.
6. Do not accept a job listing that is considered a "domestic service" or "spot job". Examples include lawn mowing, baby-sitting, house sitting, etc.
 - Domestic employers do not pay UI taxes and therefore do not meet the definition of an employer-employee relationship
 - Safety and liability concerns regarding the sending a job seeker to a private residence also preclude us from taking these types of job listings.
7. Do not accept a job listing unless there will be a potential employer-employee relationship. For an employer-employee relationship to exist, the employer must hire, fire, supervise and provide payment to employees. Therefore, do not accept job listings for self-employment opportunities. Questions about

whether employers are properly classified as employees or contractors should be referred to UI Tax. The common indicators to establish there is an employer-employee relationship include:

- The employer provides a W2 tax form at the end of the year
- The employer makes Social Security payments on behalf of the worker
- The employer provides Worker Compensation
- The employer withholds Federal and State taxes.

QUESTIONABLE EMPLOYER REQUIREMENTS ON JOB LISTINGS

Listed below are some of the questionable requirements employers have requested on their job listings and which staff may have some difficulty or concerns about. Questions should be directed to your supervisor or manager or a member of the Workforce Administration team.

Asking For Driver License or Social Security Card Prior To Hire

It is not permissible for an employer to ask to see an applicant's driver's license or Social Security Card to make sure they are authorized to work in the United States. There are numerous reasons why this practice is not acceptable. First, asking for specific work authorization documents is specifically prohibited for I-9 work verification purposes. Additionally the driver's license contains information that would reveal an individual's age, height, weight, gender, race and possible disabilities.

Charging Application Fee

Unless an employer is a private staffing or employment agency, it is permissible for an employer to charge applicants an application fee. Federal Regulations specifically prohibit private staffing or employment agencies from doing so. If an employer charges an application fee, this information and the amount of the fee to be charged needs to be included on the job listing description.

Drug Testing, Charging For

Employers may require applicants to pay for drug or alcohol testing without any requirement for reimbursement. If an employer requires a drug and/or alcohol test, and if the applicant must pay for it themselves, this must be clearly stated in the job description and it must be a requirement of all applicants of the same job classification. If possible, the cost of the drug/alcohol test should be listed. Note: Idaho Code § 72-1703 provides that private employers must pay for the costs of drug and alcohol testing for current employees and that their time spent taking the test be considered work time for purposes of compensation.

Educational Qualifications

An employer's job listing may include educational requirements to narrow their search efforts in filling their vacancies. Be sure to include the job duties and required skills in the listing to ensure job seekers are aware of all the job needs and not just the educational requirements.

Please note that it may be possible that an education requirement could be considered excessive for the job and may have the potential to discourage and/or discriminate against someone who may otherwise be qualified for the job.

If the employer has an educational requirement and an applicant does not meet that requirement, as with any other employer requirement, you should meet the employer's request and not refer the applicant. However, a job seeker lacking the higher education requirements but extensive experience may be of interest to the employer, which may be discussed with the employer as a possible referral option

English Language

An English language requirement on a job order cannot be documented unless, like BFOQs, the employer provides specific information as outlined in this section. And despite an approved listing to do so, local offices may absolutely not screen applicants based on English language abilities, including for safety reasons.

The Equal Employment Opportunity Commission (EEOC), the federal agency that enforces nondiscrimination in employment, has issued guidelines on national origin discrimination that state a language requirement can only be justified by showing that it is a business necessity, but the courts have narrowly defined business necessity. This area of EEOC law is further complicated by the fact that there are so many possible combinations of situations and individuals in the workforce. Each specific situation must be considered using the work site's specific factors such as safety, dealing with customers, dealing with co-employees and supervisors, and training on the job.

Because the primary language a person speaks and/or the fluency with which a person speaks English may be a reflection of that person's national origin, English language requirements could therefore be a basis for discrimination based on national origin, a violation of Title VII of the Civil Rights Act. Employers should be advised to avoid unnecessary language rules.

If an employer insists on requesting that an English language requirement be reflected in the job description, local office staff should inform the employer of the federal regulations and guidelines of the EEOC regarding this issue. Staff should then review our placement process and stress our automated placement system's ability to find qualified applicants based on the employer's clear and complete job description and job skills without the language requirement statement. After reviewing the information in the above paragraph, if the employer insists that an English language requirement is a business necessity for the job opening, and that the language requirement must be reflected on our job listing record, local office staff must obtain a written statement from the employer that includes:

1. An assurance that the language requirement is a business necessity,
2. A complete and detailed description of the specific job in question and why a language requirement is critical to it, and
3. An explanation as to why there are not reasonable alternatives available to requiring English for the job listed.

THE EMPLOYER SHOULD BE NOTIFIED THAT A JOB LISTING CANNOT BE ACCEPTED UNTIL THE EMPLOYER'S WRITTEN STATEMENT IS REVIEWED BY CENTRAL OFFICE STAFF. The written statement should be submitted to the Workforce Development Program Manager. It will be reviewed with Legal staff and the local office will be immediately notified if the job listing appears acceptable with an English language requirement. If the business necessity appears at all questionable or lacking in documentation, the local office will be advised that the job listing cannot be accepted unless the employer agrees to list the job listing without the English language requirement.

Under no circumstances will any Idaho Department of Labor local office staff actually screen individuals based on English language proficiency, which includes any language requirement for safety reasons.

Age Requirements

The Age Discrimination in Employment Act of 1967 prohibits discrimination against older workers, which is defined as 40 years of age and over. Younger age groups are not covered by this Act.

If an employer specifies a minimum age due to insurance requirements, child labor laws or other job-related factors, local office staff can reflect that information on the job listing and may screen referrals based on the employer's age requirements provided the age requirement does not inhibit selection and referral of older workers. A statement explaining why the employer has requested the minimum age requirements should be reflected in the job listing summary to assist with self-screening, unless discernible from the job description.

If an employer has a preference to hire an individual who is 21 or 25 years old or older, but has no BFOQ to support the preference, we could document that the employer prefers to hire an individual of that age or older. However, lacking a BFOQ, we could not actually screen on that requirement.

Idaho law stipulates minimum age requirements in certain employment circumstances, such as those working in "over 21" establishments that sell alcohol.

- Minimum age of 19 to sell, serve, possess, and dispense liquor, beer or wine in the course of employment in any place where liquor, beer or wine are lawfully present, so long as such place is the place of employment.
Idaho Code sections 23-949 and 23-943
- Minimum age of 18 to work as a musician or singer in establishments that are posted for "persons 21 and over."
Idaho Code section 23-943
- A minimum age of 18 to possess, sell, or distribute tobacco products or electronic cigarettes. A minor may incidentally possess but not sell or distribute tobacco products in the course of employment, for such duties as stocking shelves or delivering purchases to a customer's vehicle.
Idaho Code section 39-5703

Smoking & Vaping

If an employer has a no smoking policy such as "must not have smoked within the last 9 months," reflect it on the job listing for self-screening.

Employers may refuse to hire certain individuals so long as that refusal was not based on illegal discrimination (e.g. discrimination based on race, handicap, sex, religion, etc.). Because smokers are not part of a protected class, an employer may refuse to hire them.

Tattoos and Piercings

Employers may refuse to hire certain individuals so long as that refusal is not based on illegal discrimination (e.g. discrimination based on race, disability, sex, religion, etc.). Because individuals with tattoos or piercings are not part of a protected class, an employer may refuse to hire them.

Employer Tests / Testing Fees

Employers sometimes request that Department staff administer a test on behalf of the employer. In this case the employer may be using our facility and / or computers so candidates can take the employer's test. When an employer makes such a request, staff should consult with local office management to assure the following criteria are met before agreeing to test on behalf of the employer.

- The test should be reviewed by a staff person to verify that it is skills or knowledge based, and not a personality test.
- Department staff may not administer personality tests.
- If it is an online test, compatibility with department systems should be verified by trying to access the test, and checking with IT. Sometimes there are browser or other compatibility issues that need to be identified and resolved before applicants arrive to test.
- If the test will be administered outside of normal business hours, please notify the IdahoWorks mailbox and help desk mailbox with the time and date to assure there are no conflicts with system updates or scheduled down time
- It is permissible for an employer to charge a testing fee in order to apply for a job opening as long as the applicant is informed of the fee before they apply. Information regarding the fee should be placed in the job description.