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**To:** Indiana’s Workforce System

**From:** Indiana Department of Workforce Development (DWD)

**Date:** August 11, 2023

**Subject:** DWD Policy 2022-19, Change 1  
Migrant and Seasonal Farmworkers Requirements and Service Provisions under the Monitor Advocate System, Wagner-Peyser Act, and Title III of the Workforce Innovation and Opportunity Act

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## Purpose

The purpose of this policy is to provide guidance to Indiana’s workforce system regarding the mandated requirements for the Monitor Advocate System (MAS) and the provision of services to Migrant and Seasonal Farmworkers (MSFWs).

## Change 1 Summary

**Attachment B** – *MSFW Desk Reference* has been modified for printing purposes and is now a separate file on the DWD Active Policies webpage.

## Rescission

DWD Policy 2022-19 *Migrant and Seasonal Farmworkers Requirements and Service Provisions under the Monitor Advocate System, Wagner-Peyser Act, and Title III of the Workforce Innovation and Opportunity Act*

## References

See **Attachment A**.

## Definitions

### Farm work<sup>1</sup>

The cultivation and tillage of the soil, dairying, and the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm in conjunction with farming operations; this includes preparing agricultural commodities for market.

### Seasonal farmworker<sup>2</sup>

- Jobseeker worked for at least one (1) day doing farm work during the last 12 months;

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<sup>1</sup> 20 CFR 655.103(c) and 29 CFR 500.20(e).

<sup>2</sup> 20 CFR 651.10 “Seasonal farmworker”.

- The agricultural employment was of a temporary or seasonal basis; and
- Jobseeker did not have to move from their permanent residence to do this farm work.

### **Migrant farmworker<sup>3</sup>**

- Is a seasonal farmworker;
- Traveled to perform the farm work; and
- Jobseeker was **not** able to return to their permanent residence within the same day.

## **Content**

The United States Department of Labor (USDOL) created the MAS to carry out the requirements of the Judge Richey Court Order. The Judge Richey Court Order established a framework to ensure MSFWs receive services that are qualitatively equivalent and quantitatively proportionate to the services provided to all other job seekers. USDOL drew upon the authority of the Wagner-Peyser Act to implement the intent of the Judge Richey Court Order.

DWD is committed to meeting the letter and spirit of the Judge Richey Court Order and complying with all Wagner-Peyser Act Employment Service System (Employment Service) requirements set forth to govern the provision of MSFW services across Indiana's workforce system.

DWD strives to:

- Fully engage the MSFW population through the State's Outreach Program by identifying and informing MSFWs of all available services at local one-stop centers, including Wagner-Peyser and WIOA services;
- Connect workers to employers, and employers to workers, and provide services for MSFWs to obtain and retain employment at a sustainable wage, in either agricultural or non-agricultural occupations, based on the individual's career interests; and
- Develop linkages and collaborative efforts with other non-traditional service providers to enhance opportunities for MSFWs to benefit from training and education resources.

### ***Local Area MSFW Service Provision Requirements***

Each WorkOne/American Job Center (WorkOne) must offer MSFWs the full range of career and supportive services, benefits and protections, and career and training referral services as are provided to non-MSFWs.<sup>4</sup> In providing such services, WorkOne staff must consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of supportive services as well as employment and training opportunities.

### **Identifying and Serving MSFW Participants<sup>5</sup>**

Local areas are required to:

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<sup>3</sup> 20 CFR 651.10 "Migrant farmworker".

<sup>4</sup> 20 CFR 653.101.

<sup>5</sup> See **Attachment B** for additional guidance.

- Utilize the farmworker information questions within DWD’s case management system to determine whether a job seeker is a MSFW when the individual initially enrolls at the WorkOne and anytime they return to the WorkOne to receive additional services;<sup>6</sup>
- Ensure that MSFW participants who are English Language Learners (ELLs) receive free translation services as appropriate;<sup>7</sup>
- Offer the full range of WorkOne available career and supportive services, including training;<sup>8</sup> and
- Refer to additional program services that include but are not limited to Wagner-Peyser, Adult Basic Education, the National Farmworker Jobs Program (NFJP), and all other appropriate programs and services.

MSFW status is subject to change over time. Therefore, once a MSFW participant exits the Wagner-Peyser program and other partner programs in which they had been co-enrolled, and subsequently returns to the local office for services, WorkOne staff must repeat the above required activities including a review and update of the farmworker information questions.

### ***Monitor Advocate System***

The MAS is a federal/state monitoring system that ensures MSFWs have equitable access to career services, skill development, and workforce protections offered by WorkOne to improve their living and working conditions.<sup>9</sup>

Monitor Advocates conduct ongoing monitoring at local, state, regional, and national levels to ensure that services are provided to MSFWs on a basis that is qualitatively equivalent and quantitatively proportionate to all other job seekers.<sup>10</sup> The State Monitor Advocate (SMA) provides ongoing review of the delivery of services and protections for MSFWs at all WorkOne locations.

The MAS is comprised of four major components: monitoring, the Employment Service & Employment-Related Law Complaint System, outreach, and the Agricultural Recruitment System (ARS).

### **Monitoring**

The SMA must conduct an ongoing review of the delivery of services and protections afforded by Employment Service regulations<sup>11</sup> to MSFWs by DWD and the WorkOne offices. The SMA, without delay, must advise DWD and local offices of problems, deficiencies, or improper practices in the delivery of services and protections of MSFWs and may request a corrective action plan to address these deficiencies.<sup>12</sup> The SMA must also advise DWD and local areas on means to improve the delivery of services.

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<sup>6</sup> MSFW status is based on the responses from the farmworker information questions obtained from the jobseeker for the previous 12-month period, at the time of registration or during the time services are rendered. However, AJC staff must determine if jobseeker is an MSFW.

<sup>7</sup> 20 CFR 653.102.

<sup>8</sup> 20 CFR 653.101.

<sup>9</sup> <https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system>.

<sup>10</sup> 20 CFR 653.101.

<sup>11</sup> 20 CFR 653.111.

<sup>12</sup> 20 CFR 653.108(g)(1).

### **Employment Service & Employment-Related Law Complaint System<sup>13</sup>**

Wagner-Peyser regulations require DWD to establish and maintain an Employment Service and Employment-Related Law Complaint System to capture and process employment-related law complaints made by individuals, employers, organizations, associations, or other entities.

A **Complaint** means a representation made or referred to a State or Employment Service office of an alleged violation of the Employment Service regulations and/or other federal laws enforced by USDOL's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other federal, state, or local agencies enforcing employment-related law.<sup>14</sup> An **apparent violation** takes place when a WorkOne staff person observes, has reason to believe, or receives information regarding a suspected employer violation of employment-related laws or Employment Service regulations.

The complaint system handles complaints involving failure to comply with Employment Service regulations and complaints against an employer about the specific job to which the applicant was referred.<sup>15</sup> The complaint system was established to create a safe place where farmworkers could report a complaint against an employer or farm laborer contractor without fear of retaliation.

All WorkOne staff are to be knowledgeable of the complaint system within their offices as well as the internal protocols to refer or investigate Employment Service regulation and employer-related complaints. Each WorkOne maintains and completes the MSFW Complaint & Apparent Violation Log<sup>16</sup> and the Complaint/Apparent Violation Form.<sup>17</sup> All local areas must have this system in place and ensure that all local office staff are trained to take MSFW complaints.<sup>18</sup>

It is best practice that if a MSFW is hesitant to file a complaint, the WorkOne staff person should treat it as an apparent violation and report it while keeping the jobseeker's name anonymous.

***Any WorkOne personnel can take a complaint. For alleged discrimination violation against MSFW funded programs or activities including MSFW funded staff or WIOA funded staff, the discrimination complaint should be referred to the local area Equal Opportunity Officer to follow the local discrimination complaint policy and procedures.<sup>19</sup>***

### **Outreach**

The outreach program is designed to contact MSFWs who are not being reached by normal intake activities conducted by the local offices. DWD employs Outreach Staff who work in conjunction with the National Farmworker Jobs Program (NFJP) grantees and various other MSFW partners through joint outreach.<sup>20</sup> The Outreach Staff communicate with MSFWs individually or in large groups about the services available at the local one-stop centers, information on the complaint system and an overview of their farmworker rights. At times, Outreach Staff provide on-site assistance with the Wagner-Peyser

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<sup>13</sup> 20 CFR 658.411.

<sup>14</sup> 20 CFR 658.421.

<sup>15</sup> **NOTE:** The Employment Service and Employment-Related Law Complaint System does NOT cover complaints alleging violations of regulations for unemployment insurance, programs funded under Title I of WIOA, or veteran programs.

<sup>16</sup> State Form 56724.

<sup>17</sup> ETA Form 8429.

<sup>18</sup> DWD TA *Procedures and Required Forms for WorkOne Centers Pertaining to the Employment Service and Employment-Related Law Complaint System.*

<sup>19</sup> 29 CFR 38 and WIOA Sec. 188.

<sup>20</sup> 20 CFR 653.107.

application for services and other Wagner-Peyser activities when an MSFW cannot or wishes not to visit the local WorkOne.<sup>21</sup>

### **Agricultural Recruitment System (ARS)**

The Wagner-Peyser Act requires the Employment Service system to maintain a process for the orderly movement of workers within and between states. The ARS helps agricultural employers recruit qualified workers on a temporary or seasonal basis. The ARS provides protection to the workers who are not seeking permanent relocation, but rather temporary agricultural employment. Through the ARS, DWD can systematically recruit and refer qualified workers from within a state and from other states when there is an anticipated shortage of workers.<sup>22</sup>

When an agricultural employer determines a need for seasonal or temporary workers, WorkOne staff can assist the employer with recruitment efforts by entering the job order into DWD's labor exchange system as well as conducting additional recruitment activities such as virtual or in-person job fairs and staff referrals.

If it is determined through the agricultural employer's local recruitment efforts that there is an insufficient pool of local workers to meet the employer's needs and/or the office expects a shortage of local workers, WorkOne staff should advise the employer of the option to open the job order to other WorkOne offices within the state, known as an Intrastate Clearance Order.<sup>23</sup> Local staff will inform the SMA of the need to expand the job order statewide.<sup>24</sup>

If labor needs are not met statewide, with the employer's authorization, the SMA will request and submit an Interstate Clearance Order to the USDOL/ETA Regional Office for approval. Once approved, the Regional Office will advise which supply states the Interstate Clearance Order will apply, and supplying states will recruit qualified workers.

All clearance orders must be posted in accordance with applicable ETA guidance.<sup>25</sup> If the job order for the Employment Service office incorporates offices beyond the local office commuting area, the Employment Service office must suppress the employer information in DWD's labor exchange system in order to facilitate the orderly movement of workers within the Employment Service system.

### ***MSFW Equity Indicators***

Accountability measures regarding services to MSFWs, data collection, and performance are tracked by meeting the equity indicators and minimum service level indicators.<sup>26</sup> Only significant MSFW state workforce agencies will be required to meet minimum levels of service to MSFWs. Per federal regulations, Indiana is not a significant MSFW state workforce agency.

Equity Indicators address employment services and at a minimum should include MSFWs who are:

- Referred to jobs; or
- Receiving job development; or

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<sup>21</sup> 20 CFR 653.107(b).

<sup>22</sup> 20 CFR 653.500.

<sup>23</sup> DWD TA *Step-by-Step Process for Intrastate Clearance Orders*.

<sup>24</sup> Submit to [indianaflc@dwd.in.gov](mailto:indianaflc@dwd.in.gov).

<sup>25</sup> 20 CFR 653.501(a).

<sup>26</sup> 20 CFR 653.109(h).

- Referred to supportive and/or career services.

To meet equity performance standards, the percentage of services provided to MSFWs must be equal to or greater than the percentage of services offered to non-MSFWs.<sup>27</sup>

## Action

Each local area must implement and adhere to the guidance contained within this policy. WorkOne staff must be trained on the MAS and appropriate data entry for accurate federal reporting to ensure MSFWs are appropriately identified, engaged, and equitably served by all local staff. Once trained, staff should receive refresher training on the MAS at least on a yearly basis.

The contents of this policy will be subject to routine DWD monitoring.

## Attachments

**Attachment A** - References

**Attachment B** - MSFW Desk Reference

## Effective Date

Immediately.

## Ending Date

Upon rescission.

## Additional Information

Questions regarding the content of this publication should be directed to [policy@dwd.in.gov](mailto:policy@dwd.in.gov).

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<sup>27</sup> For additional information, please refer to the following PIRL elements: 1003- Received Basic Career Services (Staff-Assisted); 1102- Received Staff-Assisted Career Guidance Services; 1104- Received Staff-Assisted Job Search Activities; 1105- Referred to Employment; and 1113- Referred to Other Federal/State Assistance.

## Attachment A References

- WIOA Sec. 188
- 20 CFR 653 Subpart B
- 29 CFR 38.69
- 29 CFR 500.20
- NAACP, Western Region v. Brennan, 360 F. Supp. 1006 (D.D.C. 1973). (Judge Richey Court Order)<sup>28</sup>
- US Department of Labor (DOL) Employment and Training Administration (ETA) Form 8429, *Complaint/Apparent Violation Form*<sup>29</sup>
- Indiana Department of Workforce Development (DWD) State Form, 56724 *WAGNER PEYSER (WP) COMPLAINT AND APPARENT VIOLATION LOG*<sup>30</sup>
- DWD TA 2022-20 *Procedures and Required Forms for WorkOne Centers Pertaining to the Employment Service and Employment-Related Law Complaint System*
- DWD TA 2022-21 *Step-by-Step Process for Intrastate Clearance Orders*

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<sup>28</sup> <https://www.vec.virginia.gov/vecportal/employer/pdf/richeyorder.pdf>.

<sup>29</sup> [https://www.dol.gov/sites/dolgov/files/ETA/mas/pdfs/ETA\\_Form\\_8429.pdf](https://www.dol.gov/sites/dolgov/files/ETA/mas/pdfs/ETA_Form_8429.pdf).

<sup>30</sup> Staff can access this form on the DWD Staff Portal.

## **Attachment B MSFW Desk Reference**

The MSFW Desk Reference provides WorkOne staff a resource that includes standard operating procedures, farmworker definitions, and examples of different types of farmwork to assist in the identification of and appropriate service delivery to MFSWs.

The printable MSFW Desk Reference is a separate document that can now be accessed on the DWD Active Policies webpage, <https://www.in.gov/dwd/compliance-policy/policy/active>.