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## DWD Policy 2023-20, Change 1: Discontinuation of Wagner-Peyser Employment Services to Employers

**To:** Indiana's Workforce System  
**From:** Indiana Department of Workforce Development (DWD)  
**Date:** March 6, 2025

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### PURPOSE

To provide guidance on the discontinuation of Wagner-Peyser employment services to employers that use WorkOne/American Job Center (WorkOne/AJC) resources funded in whole or in part by the state's Wagner-Peyser (WP) Employment Services (ES) grant and the conditions under which those services will be discontinued.

### CHANGE 1 SUMMARY

Per TEN 27-23, Change 1 and 2, this policy has been updated to align with the Employment Service (ES) regulations at 20 CFR parts 653 and 658 that were in effect on June 27, 2024.

### RESCISSION

DWD Policy 2023-20 *Discontinuation of Wagner-Peyser Employment Services to Employers*

### REFERENCES

- 20 CFR 651.10 (June 27, 2024)
- 20 CFR 653 (June 27, 2024)
- 20 CFR 658.411 and 417 (June 27, 2024)
- 20 CFR 658 Subpart F (June 27, 2024)
- TEN 27-23, Change 1 and 2 *Implementation of the Final Rule, Improving Protections for Workers in Temporary Agricultural Employment in the United States, in Compliance with District Court Order*

### DEFINITIONS<sup>1</sup>

**Clearance order** means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS).

**Employer** means a person, firm, corporation, or other association or organization which currently has a location within the United States to which U.S. workers may be referred for employment and which proposes to employ a worker at a place within the United States and which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises, and otherwise controls the work of such employees. An association of employers is considered an employer if it has all of the

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<sup>1</sup> As defined at 20 CFR 651.10, in effect on June 27, 2024.

indicia of an employer set forth in this definition. Such an association, however, is considered as a joint employer with the employer member if either share in exercising one or more of the definitional indicia.

**Employment-related laws** mean those laws that relate to the employment relationship, such as those enforced by the United States Department of Labor's (USDOL) Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), or by other Federal, State, or local agencies.

**Employment Service (ES) regulations** mean the Federal regulations at this part and parts 652, 653 (June 27, 2024), 654, and 658 (June 27, 2024) of this chapter, and 29 CFR part 75.

**Field checks** mean unannounced appearances by ES staff and/or other State or Federal staff at agricultural worksites to which ES placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the clearance order and that the employer is not violating employment-related law.

## CONTENT

Employers must comply with all applicable employment-related laws as well as the full terms and conditions of clearance orders in order to employ workers through the ES system. Under certain circumstances, the Indiana Department of Workforce Development (DWD) has the authority to discontinue employment services to employers to ensure that the rights of workers are protected.

Discontinuation of employment services is an administrative process that requires formal notice to employers. The notification will describe the reason for the initiation of discontinuation of ES services and provide instructions on how to correct an issue (if applicable).

### Basis for the Discontinuation of Employment Services to Employers<sup>2</sup>

DWD will initiate procedures for discontinuation of services to employers who:

1. Submit and refuse to alter or withdraw job orders containing specifications which are contrary to employment-related laws;
2. Submit job orders and refuse to provide assurances, in accordance with the Agricultural Recruitment System<sup>3</sup> for U.S. Workers, that the jobs offered are in compliance with employment-related laws, or to withdraw such job orders;
3. Are found through field checks or otherwise to have either misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders;
4. Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws, and notification of this final determination has been provided to USDOL or DWD by that enforcement agency;

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<sup>2</sup> Per 20 CFR 658.501(a)(1-8), in effect on June 27, 2024.

<sup>3</sup> 20 CFR Part 653 Subpart F.

5. Are found to have violated ES regulations;<sup>4</sup>
6. Refuse to accept qualified workers referred through the clearance system;
7. Refuse to cooperate in the conduct of field checks conducted;<sup>5</sup> or
8. Repeatedly cause the initiation of the procedures for discontinuation of services due to any of the aforementioned reasons in this list.

If it comes to the attention of an ES office or DWD that an employer participating in ES may not have complied with the terms of its temporary labor certification under, for example, the H-2A and H-2B visa programs, DWD will engage in the procedures for discontinuation of services to employers 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.<sup>6</sup>

### **Discontinuation of Services Clarification<sup>7</sup>**

On April 29, 2024, USDOL published in the Federal Register the Farmworker Protection Rule, which revises Wagner-Peyser Act ES regulations at 20 CFR parts 651, 653, and 658. The Final Rule made revisions throughout 20 CFR 658, subpart F to clarify and streamline the discontinuation of ES services procedures. Revisions include provisions whereby one state's discontinuation of services would require other states to also deny access to services to that employer.

On August 26, 2024, the United States District Court for the Southern District of Georgia issued a preliminary injunction which specifically prohibited USDOL from enforcing the Farmworker Protection Rule in certain states. Indiana is subject to this injunction.

### **Notification of the Intent to Discontinue the Provision of Employment Services to Employers**

DWD will notify employers in writing of its intent to discontinue employment services and state the reason for the discontinuation. Notifications will also inform employers that discontinuation of services will occur within twenty (20) working days from the date of the notification unless the employer takes certain actions as specified in the notification.<sup>8</sup>

If the employer desires a hearing in the event that DWD does not accept their documentary evidence or assurances as adequate, the employer must submit the request for a hearing at the same time that they respond to the notification.<sup>9</sup>

### **Discontinuation of Services to Employers<sup>10</sup>**

DWD will issue, via certified mail, a final determination within twenty (20) working days of receiving the employer's response or from the date of when the notification was received by

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<sup>4</sup> Pursuant to 20 CFR 658.411, in effect on June 27, 2024.

<sup>5</sup> Pursuant to 20 CFR 653.503, in effect on June 27, 2024.

<sup>6</sup> Pursuant to 20 CFR 655.184 or 20 CFR 655.73, in effect on June 27, 2024, of this chapter respectively.

<sup>7</sup> TEN 27-23, Change 2.

<sup>8</sup> Employer actions are detailed at 20 CFR 658.502(a), in effect on June 27, 2024.

<sup>9</sup> 20 CFR 658.502(b), in effect on June 27, 2024.

<sup>10</sup> 20 CFR 658.503, in effect on June 27, 2024.

the employer if the employer fails to respond. If the employer does not provide a satisfactory response<sup>11</sup> within 20 working days or has not requested a hearing, DWD will immediately terminate services to the employer.<sup>12</sup>

DWD may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures<sup>13</sup> would cause substantial harm to a significant number of workers.<sup>14</sup>

If services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, DWD will immediately notify the ETA regional office.<sup>15</sup>

### Reinstatement of Services to Employers

Services may be reinstated<sup>16</sup> to an employer if:<sup>17</sup>

- DWD is ordered to do so by a Federal Administrative Law Judge or Regional Administrator; **or**
- The employer provides adequate evidence that any policies, procedures or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar circumstances are not likely to occur in the future; **and**
- The employer provides adequate evidence that they have responded adequately to any findings of an enforcement agency, State Workforce Agency, or United States Department of Labor/Employment and Training Administration (USDOL/ETA), including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.

DWD will notify the employer requesting reinstatement within 20 working days regarding whether their request has been granted or denied. If DWD denies the request for reinstatement, the notification will specify the basis for the denial and the inform the employer they may request a hearing within 20 working days. If the employer makes a timely request for a hearing, DWD will follow the procedures set forth at 20 CFR 658.417.

## ACTION

Local boards must ensure that all staff, especially those delivering Business Services, are aware of the contents of this policy. It should also be noted that the discontinuation of services process applies to all WorkOne/AJC staff. If staff witness a violation that could lead to a discontinuation of ES employer services, staff are to contact DWD to initiate an investigation to ensure that the rights of Indiana's workers are protected.

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<sup>11</sup> In accordance with 20 CFR 658.502, in effect on June 27, 2024.

<sup>12</sup> 20 CFR 658.503(a), in effect on June 27, 2024.

<sup>13</sup> Set forth in this subpart in paragraphs (a)(1) through (7) of this section, in effect June 27, 2024.

<sup>14</sup> In such instances, procedures at 20 CFR 658.503 and 20 CFR 658.504, in effect on June 27, 2024, will be followed.

<sup>15</sup> 20 CFR 658.503(b), in effect on June 27, 2024.

<sup>16</sup> After discontinuation under 20 CFR 658.503(a) and (b), in effect June 27, 2024.

<sup>17</sup> 20 CFR 658.504, in effect June 27, 2024.

**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).