

RICK SNYDER  
GOVERNOR



CHRISTINE QUINN  
DIRECTOR

**OFFICIAL**

E-mailed: 06/07/13 (pv)

**Workforce Development Agency, State of Michigan (WDASOM)**  
**Policy Issuance (PI): 11-11, Change 1**

**Date:** June 7, 2013

**To:** Michigan Works! Agency (MWA) Directors

**From:** Gary Clark, Director, Office of Talent Development Services  
Workforce Development Agency  
**SIGNED**

**Subject:** Employment Service (ES) Manual Changes (Sections 500-504)

**Programs Affected:** Wagner-Peyser ES  
Agriculture Labor Exchange

**Rescissions:** None

**References:** The Wagner-Peyser Act of 1933, as amended by the Workforce Investment Act of 1998

The Michigan Employment Security (MES) Act  
Local Michigan Works! System Plans  
The Workforce Investment Act (WIA) of 1998

Priority of Service for Covered Persons; Final Rule: 20 CFR Part 1010, Federal Register, Volume 73, Number 245, Friday, December 19, 2008

Bureau of Workforce Transformation PI 06-31 and its changes: Criteria for Obtaining a Waiver of Unemployment Insurance (UI) Eligibility Requirements

5 CFR 900.603, 900.604



Victor Office Center | 201 North Washington Square, 5<sup>th</sup> Floor | Lansing, Michigan 48913  
517.335.5858 | TTY 888.605.6722

**Background:** The ES Manual provides guidance for local and state level ES administration as mandated by the Wagner-Peyser Act, the MES Act, the WIA, and other state and federal statutes and regulations.

**Policy:** MWAs are to implement the directives of this policy issuance in the local operation of ES programs in the One-Stop Service Centers.

**Action:** MWAs should replace the existing, corresponding ES Manual pages with those attached to this policy issuance specific to Sections: 500-504 of the guidelines pertaining to labor exchange services for agricultural workers, Sections 500-523 of the ES manual.

Questions regarding this policy issuance should be directed to Mr. Brian Marcotte at (517) 335-5858.

The information contained in this policy issuance will be made available in alternative format (large type, audio tape, etc.) upon special request received by this office.

**Expiration**

**Date:** Continuing

GC:CS:pv  
Attachments

**Workforce Development Agency, State of Michigan  
Policy Issuance 11-11, Change 1**

**EMPLOYMENT SERVICE MANUAL  
ONLY SECTIONS: 500–523  
AGRICULTURAL LABOR EXCHANGE**

**500 Agricultural Labor Exchange****Agricultural Employment Specialist (AES)****Agricultural Worker****Crew****Crew Leader****Farm Labor Contractor (FLC)****Farm Labor Contractor Employee (FLCE)****Migrant Farm Worker****Migrant Food Processing Worker****Seasonal Farm Worker****Agricultural Employment Specialist:**

*Agricultural Employment Specialists (AES)* are full-time, year-round outreach workers employed by the State of Michigan's Workforce Development Agency (WDA). AES conduct vigorous outreach activities and make available the full-range of employment services throughout Michigan's Lower Peninsula, with a concentration on the significant Migrant Seasonal Farmworker areas in order to reach the highest Migrant and Seasonal Farmworker populations.

**Agricultural Worker:**

An *agricultural worker* is a worker whose primary work experience has been farm work in industries classified in the 2002 North American Industry Classification System (NAICS) [formerly the 1987 Standard Industrial Classification (SIC) Manual] under Major Group 11: Agriculture, Forestry, Fishing and Hunting, or Group 311: Food Manufacturing. This definition of an agricultural worker applies whether the individual is a citizen or an alien who is legally allowed to work in the U.S.

**Crew:**

*Crew* is a group of agricultural workers that are considered to be working together. A family may be defined as a crew.

**Crew Leader:**

The term *Crew Leader* is the same as Farm Labor Contractor. See the Farm Labor Contractor definition below.

**Farm Labor Contractor:**

A *Farm Labor Contractor (FLC)* is any person (other than an agricultural employer, agricultural association, or an employee of either an agricultural employer or association) who is paid or promised money or other valuable consideration in exchange for engaging in at least one of the named activities. Named activities are: The furnishing, employing, soliciting, recruiting, hiring, and transporting of one or more migrant or seasonal agricultural workers.

**Farm Labor Contractor Employees:**

*Farm Labor Contractor Employees (FLCEs)* are crew or family group members that work for a Crew Leader or FLC.

**Migrant Farm Worker:**

A *migrant farm worker* is a seasonal farm worker who must travel to do the farm work so that he or she is unable to return to his or her permanent place of residence within the same day.

**Note:** Full-time students who are not traveling as members of a family group are excluded.

**Migrant Food Processing Worker:**

A *migrant food processing worker* is a person who meets the criteria of a *migrant farm worker* but who works in food processing, as classified in the 2002 NAICS (formerly the 1987 SIC Manual).

**Seasonal Farm Worker:**

A *seasonal farm worker* is any worker who was employed in the following manner during the preceding 12 months:

- Worked at least 25 days, or parts of days, doing farm work.
- Earned at least half of his or her earned income from seasonal farm work.
- Was not employed in farm work year-round by the same employer.

**Note:** Full-time students are excluded from this definition.

**500-B Agricultural Labor Exchange: Definitions**

This section contains information about regulations affecting the recruitment, selection, and referral of agricultural workers. The topics covered include:

- Domestic and migrant agricultural workers, and migrant and seasonal farm workers (MSFWs).
- The conditions and regulations affecting the importation of foreign workers.
- The development of relationships and working agreements with employers, workers, local, state and federal agencies.
- The requirement for collection, gathering, and distributing agricultural labor market data.

The Wagner-Peyser Act and federal Title 20 CFR, 651-658 describes the major objectives of the agricultural placement program as follows:

- To serve all agricultural employers and job seekers without discrimination or preference, except as may be required by law or regulations, and

- To ensure delivery of employment and supportive services to MSFWs on a basis that is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

The extensive 1980 federal MSFW regulations have also been interpreted to assure statewide consistency of application. The services and protections awarded are tightly controlled and closely monitored. All MSFWs applying for ES must have a profile placed in the Talent Connect System.

### **500-C Agricultural Labor Exchange: ES Procedures**

Each local WDASOM service delivery location will offer MSFWs the same facilitated services that are offered to non-MSFWs, except in cases where mediated services are provided to MSFWs only. In providing such services, the MWA service center staff shall consider and be sensitive to the preferences, needs and skills of individual MSFWs and the availability of job and training opportunities.

When a MSFW applies for ES or is contacted by an AES the available services will be explained to the MSFW. This explanation of services shall be made in Spanish, if necessary or requested.

## **501 Talent Connect System Profile**

### **501-A Talent Connect Profile for Agricultural Workers: Policy**

A Talent Connect Profile is required of MSFWs in order for them to be eligible for ES services. If the MSFW wishes to register for the full range of available ES services, the profile that they enter into the Talent Connect System must be complete. An AES or designated MWA staff person may assist the MSFW in entering their profile, if assistance is required. In order for MSFWs to qualify for all available ES services, their searchable profile must include the following information:

- All significant work history
- Training and educational background
- Type of work wanted and job title
- Locations in which they are available to work, and
- Other required and pertinent information.

Job order information must be conspicuous and available to MSFWs in all offices.

Each significant MSFW office must provide adequate staff assistance to every MSFW to facilitate or mediate the use of the Talent Connect System.

In offices that are designated as significant MSFW bilingual offices, such assistance must be provided to MSFWs in both Spanish and English, whenever requested or necessary, during any period of substantial MSFW activity.

Profiles will be reviewed periodically to ensure their accuracy and quality. The profile-taking process and self-registration of MSFWs into the Talent Connect System will also be reviewed during state and federal on-site reviews by the state and federal MSFW

Monitor Advocates and/or the review staff. These reviewers will verify overall accuracy and quality, and offer technical advice regarding corrections or improvements.

A profile in the Talent Connect System is not needed under the following circumstances:

- When the MSFW requests referral to seasonal agricultural work only and immediate seasonal agricultural work is available.
- The MSFW is unable to provide enough information for a complete profile in the Talent Connect System.
- The job application is taken at the job or farm site other than an employment service location.

### **501-B Talent Connect Profile for Agricultural Workers: Procedures**

If a MSFW is not currently interested in the full range of available ES services, an oral explanation of all available services must be provided. In addition, the MSFW must be given a copy of form DLEG-BWP 300-B, Notice to Job seekers, which includes a list, in both Spanish and English, of the circumstances under which a MTB profile is, and is not, required.

- An exemption from completing a Talent Connect profile should be requested by the MSFW and not initiated by the AES or MWA staff person. Because this exemption limits access to jobs to referrals for agricultural work, it should be used sparingly, and only as a tool to facilitate expedient delivery of services to the MSFW.
- MSFWs must be afforded the chance to choose between completing a mediated service registration only, or also completing a full profile in the Talent Connect System *in a language that they can readily understand* (typically English or Spanish). A paper profile can be completed in Spanish, but not on the electronic system.
- The MSFW shall be advised that he or she may complete a profile in the Talent Connect System at any time in the future.

If the MSFW does not complete a profile, ES staff must do the following:

- Select “Field Work Only” on the mediated services registration.
- Record the fact that the Notice to Job seekers, form DLEG-BWP 300-B, has been given to the MSFW by reporting a “Specific Labor Market Information” service in the mediated services reporting system and by annotating in the comments section that a DLEG-BWP 300-B has been provided.

### **501-C Talent Connect System Profile Entry for FCLEs/Crews and Family Groups**

A MSFW/non-MSFW family or crew may not be referred to a job unless *all* working members (including the family head or crew leader, if a working member) have a completed mediated services registration and a Talent Connect profile. However, general information, such as types of crops, may be provided to the leader or family head prior to registration of all working members.

**501-D Talent Connect System Profile Entry for Farm Labor Contractors**

A Mediated Services registration shall not be accepted from an individual for employment as a Farm Labor Contractor (FLC) unless the individual shows or obtains a valid “FLC Certification of Registration.” If a copy of this document is not already on file, AES staff shall make two copies of the document: one for their files and one to be sent to the State Monitor Advocate. Failure to obtain proof of certification as a FLC or Farm Labor Contract Employee (FLCE) is a violation of federal law. All such violations will be reported to the USDOL Wage and Hour Inspector.

**502 FLCEs/Crews and FLCs/Crew Leaders****502-A FLCEs/Crews and FLCs/Crew Leaders: Policy**

MSFWs are not to be referred to a FLC (Crew Leader) or a FLCE (crew) who does not possess an FLC Certificate of Registration or a FLCE Identification Card for the current calendar year. If a copy of this document is not already on file, AES staff must make two copies of the document: one for their files and one to be sent to the State Monitor Advocate. Failure to obtain proof of certification as a FLC or FLCE is a violation of federal law. Such violations will be reported to the USDOL Wage and Hour Inspector.

Staff may refer MSFWs to a registered FLC, provided that a job order clearly specifying all of the terms and conditions of employment and showing the FLC as the employer of record has been placed in the MTB.

Before staff may refer workers to an FLC who is offering employment in another area of the state or in another state, one of the following requirements must be met:

- A valid interstate clearance order must be on file in the office.
- An intrastate order must be on file from another area of the state that is not within commuting distance of the office where the FLC is recruiting workers. See Section 502 B.
  - Unless either one of the above conditions exist, workers may only be referred to registered FLC employers who are placing local job orders.
  - Whenever a job order involving a registered FLC includes the provision of transportation and/or housing, an FLC certificate authorizing transportation and/or housing must be shown before workers are referred on the order.
  - Each working member of a MSFW family or crewmember must be registered in mediated services and have a profile in the Talent Connect System, if desired, before being referred on an order. This includes the family head or crew leader if he or she is a working member.

**502-B FLCEs/Crews and FLCs/Crew Leaders: Verification of Housing Compliance**

MSFWs/non-MSFWs in need of housing must not be referred to an employer until verification has been received that the employer’s housing has been inspected and licensed for the current year. The verification may be made by checking the Inspection Report of the Michigan Department of Agriculture. If the housing, or camp, has not been



inspected, or has been designated as “not recommended,” referrals cannot be made until it can be verified that a “temporary” or a “full” license has been issued.

#### **502-C FLCs/Crews and FLCs/Crew Leaders: Verification of Housing and Job Openings**

When referring MSFWs/non-MSFWs to agricultural jobs where housing is to be provided as a condition of employment, AESs or MWA staff must contact the employer by phone, in the presence of the MSFW/non-MSFW, to verify the job openings and the housing. If the employer cannot be reached, the staff person will inform the MSFW of the inability to verify that the job openings and housing still exist with this employer. The MSFW may be referred under these conditions if they so desire. Form DLEG-BWP 2524, Agricultural Job Order Information, should be marked “No” in the Section labeled “Contacted Employer To Verify Job Opening.”

#### **502-D FLCs/Crews and FLCs/Crew Leaders: Intrastate Orders**

MSFWs/non-MSFWs may not be referred to employers who are too far away for a daily commute unless the agricultural job order provides housing. Sixty-five miles is considered commuting distance. Job orders that require workers to travel more than 65 miles are considered intrastate orders, due to the necessity to provide housing.

#### **502-E FLCs/Crews and FLCs/Crew Leaders: Day Haul Responsibilities**

- WDA staff shall not participate in the establishment, operation, or supervision of any agricultural day-haul facilities unless exceptional circumstances warrant such action and prior approval is obtained from the USDOL Regional Administrator (RA).
- No individuals shall be referred to a non-ES operated day-haul facility, unless the individual is referred on a specific job order and is provided with a checklist that provides information and assistance. The State Monitor Advocate will provide monitoring of these activities.
- AES staff shall visit all ES and non-ES operated day-haul facilities where substantial numbers of MSFW are employed during the hours of their operation. The purpose of these visits is to provide MSFWs/non MSFWs with information and assistance. The State Monitor Advocate will provide monitoring and oversight of these visits.

#### **503 Local Orders: Procedures**

When workers are referred to an agricultural employer on a job order, the AES staff person prepares form DLEG-BWP 2524, Agricultural Job Order. This form can be obtained by contacting the State Monitor Advocate. A copy of this form is given to the worker, family head, or crew leader, as the case may be. A second copy is annotated to record the name of the individual to whom the first copy was given and is retained for the office files.

#### **504 Intrastate and Interstate Clearance Orders: Policy**

- Any worker or other interested party to a Michigan agricultural intrastate or interstate clearance order must, upon request, be given a completed copy of form DLEG-BWP 2524.

- Federal regulations require employers to supply each worker who is obtained through an agricultural intrastate or interstate clearance order with a copy of the work contract in the worker's fluent language.
- Some employers have adopted a Spanish version of their work contract. For those who have not, the WDASOM will furnish the employer with sufficient copies of a bilingual form, similar in format to the DLEG-BWP 2524, which omits all references to BWP. The state administrative office of the WDASOM will maintain a supply of these Agricultural Job Order forms and will furnish local offices with sufficient copies upon request.
- Title 20 CFR, Section 653.501 states under the section entitled "Requirements for Accepting and Processing Clearance Orders" that, "In view of the statutorily established basic function of the job service as a no-fee labor exchange, . . . neither the ETA nor the state agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited . . . constitute a contractual job offer to which the ETA or a state agency is in any way a party."