

OSOS BUSINESS RULES AND DEFINITIONS REFERENCE GUIDE

POLICIES RELATED TO JOB ORDERS

Federal minimum wage - The Federal minimum wage is **\$7.25** per hour with health insurance benefits provided by employer and received by employee; minimum wage is \$8.25 per hour without health insurance provided by employer.

POSTING REQUIREMENTS: *Posting a job order with Nevada JobConnect Job Bank requires the following information: Federal Employer Identification Number (FEIN) and/or State Employer Identification Number (SEIN), or proof of application for the Nevada (SEIN.) The exception to this requirement will be private individuals posting for day labor positions.*

Legal Brothels - Job orders can be accepted from legal brothels for employment opportunities such as: bartender, maid, janitor, and maintenance or similar.

Affirmative Action - The Employment Service will cooperate with employers in meeting their affirmative action goals by accepting court ordered affirmative action job orders.

Interstate Job Bank - The Employment Service will cooperate in establishing and maintaining a system for facilitating the movement of non-agricultural workers between labor market areas within the state (Interstate clearance) or between states (Interstate Job Bank).

THE FOLLOWING WILL NOT BE ACCEPTED ON JOB ORDERS

Discontinued Services - Job Order from an employer who has had services discontinued in accordance with federal regulations or laws.

Independent Contractor – Jobs will not be posted for listings without an employer / employee relationship as established by the Federal Code of Regulations which defines this relationship as: *a person, firm, corporation or other association or organization which has an employer relationship to employees as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employee.*

Third-party postings –Job Orders from Third Party, Agencies, jobs management site or job posting vendors or agencies will not be posted to the State Job Bank. (Third party agencies are not to be confused with staffing agencies.)

Specifications - Jobs which contain specifications which are in violation of federal, state or local laws; such as laws governing wages, hours, child labor, or housing standards where housing is offered as a condition of work.

Discriminatory Provisions - Job orders, which contain language which violates Equal Employment Opportunity Commission (EEOC) regulations which could be deemed as

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discriminating against any of the following: Disability, Equal Pay/Compensation, Genetic Information, National Origin, Pregnancy, Race/Color, Religion, Retaliation, Sex, Sexual Harassment.

Labor Disputes - Job orders for occupations that involve labor disputes.

Monetary Charge - Job orders for which a job referral may result in a monetary charge or any other kind of charges being made to the applicant.

Farm Labor Contractors - Job orders from farm labor contractors who are not registered with the Employment Standards Administration where required by federal law and who do not possess a valid Nevada certificate where required by state law.

Pre-Determined Referrals - Job orders which specifically designate the individual to be referred, except an agricultural job order, for a specific crew leader or worker preferred by the employer provided the order meets the non-discrimination criteria.

Recruiting U.S. Workers - Job orders from the United States and foreign employers to recruit U.S. workers for employment at locations outside the U.S. U.S. workers for employment at locations outside the U.S. are subject to the requirements of federal regulations, irrespective of the laws of the country in which the employment is located. Prior to performing any service under a job order of this type, we must have a written understanding with the employer on the particulars of the referral activity, and copies of the job order and written understanding must be sent to the Regional Office. Policy is that orders will be written for the number of openings the employer will be recruiting for. When job orders are written, every possible effort should be made to obtain a salary and/or pay range from the employer.

Polygraph Testing - No job orders may be placed in the system for employers requiring or requesting polygraph testing unless the job qualifies under the exemptions. Specific procedures will be issued as clarification is received from the Department of Labor.

Staffing Agencies – No open-ended or blanket recruitments may be posted which could be used for the purpose of list building. Jobs listed by staffing agencies will include open/close dates, job title and duties associated with the specific listing.

Credit Checks –Assembly Bill No. 181 Employers may not post jobs requiring consumer credit reporting as condition of employment, unless circumstances in which the information contained in the consumer credit report or other credit information is reasonably related to the employment. A.B. 181 (http://www.leg.state.nv.us/Session/77th2013/Bills/AB/AB181_EN.pdf)

Job Listings which require Criminal Background Checks as part of hiring process must comply with the steps described below which are based on Training and Employment Guidance Letter No. 31-11 of May 25, 2012.

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http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9230

When an employer registers with Nevada JobConnect or other covered entity, for the purpose of posting open job orders, it should receive **Notice #1 of TEGL 31-11**. This notice explains that the covered entity must comply with federal civil rights laws which, due to the likely disparate impact of criminal record exclusions on protected groups, generally prohibit categorical exclusions of individuals based solely on an arrest or conviction history. The notice also provides information to employers about their obligations under the Fair Credit Reporting Act, which requires employers to obtain applicants permission before asking a background screening company for a criminal history report and to provide applicants with a copy of the report and a summary of their rights before taking adverse action. Additionally the notice describes the Work Opportunity Tax Credit (WOTC) and the Federal Bonding Program, two incentives that support employers' hiring of individuals with conviction histories.

When Job Postings that exclude individuals based on arrest and/or conviction history have been identified, covered entities should provide employers that have posted these vacancy announcements with **Notice #2 of TEGL 31-11**. This notice states that in order to ensure that the employer and covered entity are in compliance with federal civil rights laws, the employer will be given the opportunity to remove or edit the vacancy announcement.

Any vacancy announcements containing language excluding candidates based on criminal history should only remain posted when accompanied by **Notice #3 of TEGL 31-11 to job seekers**. This notice explains that the exclusions in the posting may have an adverse impact on protected groups, as set forth in the EEOC guidance. The notice further informs job seekers that individuals with criminal history records are not prohibited from applying for the posted position.

Employers who do not wish to comply with the requirements of **TEGL 31-11** will be subject to the Discontinuation of Services process.

Discontinuation of Services:

Federal regulations pertaining to discontinuation of services to employers have been revised (20 CFR Part 658, Subpart F.), and pursuant to these requirements, Nevada State Job Service adopts a policy regarding the scope of services that may be withdrawn, the condition for their reinstatement and avenues of appeal.

Services referred to in the discontinuation notice are the broad areas of assistance provided through the employer relations program. Included are listings of job openings, mass recruitment and alien recruitment, technical assistance covering information on government sponsored employment programs, information used in planning affirmative action programs, and labor market information provided by the Employment Security Division.

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In order for the discontinuation process to be initiated, a basis for the action must be established. The basis is:

The employer refuses to withdraw or alter a job order which contains specifications contrary to employment related laws, e.g., wage/hour laws, anti-discrimination laws, etc.

It is Job Service policy not to process and refer on orders in violation of these laws. Therefore, the preceding basis applies to employers who refuse to change job order specifications when informed that the order is in violation.

There has been a decision by an enforcement agency, e.g., State Labor Commission, Equal Rights Commission, etc., that the employer has been in violation of an employment related law.

Job service staff discovers that there has been willful misrepresentation in the terms and conditions stated in the job order or other practices prohibited by Job Service Regulation. This might be discovered through investigation of a job service related complaint, field check on an agricultural order, etc.

There has been a violation of regulations pertaining to agricultural clearance orders including the following:

- a. The employer refuses to provide the required assurances as provided for by 20 CFR 653.501(d). The State Central Office is responsible for seeing that these assurances are met.
- b. The employer refuses to accept qualified workers provided through the clearance system.
- c. The employer refuses to cooperate with required field checks.

Situations covered by the preceding condition may become known to agency personnel at several levels. **At the local office level the local office manager** has the responsibility of documenting possible violations from the various sources available, e.g., interviewer reports, employer representative information, complaints, newspaper accounts, etc.

Upon receipt of documentation the Employment Service Administrator will review the information for possible violation. If one or several of the preceding bases apply, the **Employment Service Administrator** will issue a notice of intent to discontinue services, citing the reason(s) and options available to the employer before actual discontinuation. In exceptional situations, the regulations provide for bypassing the notice of intent. The Employment Service Administrator may discontinue services immediately if there is reason to conclude that by not doing so, substantial harm might occur to a significant number of workers.

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Upon notification of intent to discontinue services, the employer is allowed a period to respond before discontinuation occurs.

The employer may respond by providing information that the allegation cited as the basis is false, or show that there has been no violation of an employment-related law or Job Service Regulation. The employer also may demonstrate that the practice causing the notice has been corrected or that, while the particular job is no longer available, assures the Job Service that the future job orders will be in compliance. In addition to these remedies, the employer may request a formal hearing on the charges. In the case of a request for hearing, the procedure 658.417 will be followed. Services cannot be discontinued when a request for a hearing has been submitted and prior to the finding of the hearing official.

The designated State Hearing Official will conduct hearings. In employment-related matters, this will be the Unemployment Appeals Referee. In the interest of providing a convenient and timely setting, notification of time, place and subject of the hearing will be provided to all parties involved.

Conducting the hearing, the hearing official may issue subpoenas as necessary and it is the responsibility of the hearing official to insure relevant information is presented pertinent to the subject of the hearing. The hearing official will issue, in writing, the outcome of the hearing, citing the reasons, findings and conclusions. This written document is to be available to all interested parties and will include a statement indicating the appeal process available to persons who are dissatisfied with the results at the state hearing level.

If, however, within 20 working days after notification of intent to discontinue, the employer fails **to respond**, does not meet the charges, or does not request a hearing, it is the responsibility of the Employment Service Administrator to immediately discontinue services. Reinstatement of services will occur upon receipt of evidence that the practice(s) responsible for discontinued action have been corrected, or upon order of the State Hearing Official.

In the instance of the appeal after the states hearing level, the Federal Administrative Law Judge or the Regional Administrator may order reinstatement of services.

Discriminatory Job Orders - This includes orders from employers, which has evidence, or information that they discriminate by Disability, Equal Pay/Compensation, Genetic Information, National Origin, Pregnancy, Race/Color, Religion, Retaliation, Sex, Sexual Harassment.

Laws pertaining to discriminatory hiring qualifications are:

- A. 1. Title VI of the Civil Rights Act of 1964 states that: Section 601. "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This section of the Civil

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Rights Act applies to all Employment Service programs and services. Regulations for implementing Title VI 29 CFR 31.

2. Title VII of the Civil Right Act of 1964 prohibits discrimination on the grounds of race, color, religion, sex, or national origin by employers or unions with 15 or more employees. The designation "employer" includes the government of the United States, corporations wholly owned by the United States, and State or political subdivision thereof. It also applies to all State Employment Security Agencies.

2.a. Title VII of the Civil Rights Act of 1964, as amended: 42 U.S.C. 2000e-2(a) (disparate treatment), 2000e-2(b) (employment agency practices), 2000e-2(a)(2) and 2000e-2(k) (disparate impact by employers and employment agencies), 2000e-3(b) (employment agency job postings) *Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N (April 25, 2012),

3. The Age Discrimination in Employment Act 1967 prohibits arbitrary discrimination against persons between the ages of 40 and 70. It applies to all State Employment Security Agencies. Exempted from this Act are activities and programs under Federal contracts or grants designed exclusively to encourage or provide employment for persons with special employment problems (Senior Community Service Employment Program, Project Green Thumb, etc.). This exemption includes certain JTPA employment activities, which are designed for the long-term unemployed, the handicapped, and members of minority groups, older workers, or youth.

4. The Equal Pay Act of 1963 provides that an employer may not discriminate on the basis of sex by paying employees different wages for doing equal work on jobs requiring equal skill, effort, and responsibility, and which are performed under similar working conditions in the same establishment.

5. Workforce Investment Act (WIA): 29 U.S.C. 2938 (nondiscrimination by recipients of federal financial assistance under WIA) ○ 29 C.F.R. 37.2(a)(2) (programs operated by One-Stop partners as part of the One-Stop system must comply with nondiscrimination regulations), 37.6(d)(1) (administration of programs cannot have discriminatory purpose or effect)

6. Wagner-Peyser Act: 20 C.F.R. 652.8(j)(1) (nondiscrimination by recipients of federal financial assistance under Wagner-Peyser), 652.8(j)(2) (States must assure that discriminatory job orders will not be accepted except where there is a bona fide occupational qualification (BFOQ))

B. Orders containing discriminatory specifications as Disability, Equal Pay/Compensation, Genetic Information, National Origin, Pregnancy, Race/Color,

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Religion, Retaliation, Sex, Sexual Harassment. Specification that an employer does or does not want or prefers applicants of a particular race, color, sex, age, religion, or national origin is a specification which discriminates on the basis of these factors. However, an order specifying that applicants be American citizens shall not be considered discriminatory if the specification is based upon a legal requirement of citizenship for workers in certain jobs or situations. If a specification is designed to exclude, or results in the exclusion of, applicants of a particular race, color, sex, age, religion, or national origin, it is also a specification discriminating on the basis of these factors, even though the factors are not expressed.

Bona Fide Occupational Qualification - (BFOQ) - An employment decision or request based on age, sex, national origin or religion that is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question (i.e., Chinese cook, masseur, etc.). Since a bona fide occupational qualification is an exception to the general prohibition against discrimination on the basis of age, sex, national origin or religion, it must be interpreted in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR Parts 1604, 1605, and 1627. Establishing a need for a bona fide occupational qualification rests with the employer. When requesting that the order state such an occupational qualification, the employer will be requested to provide the legal (approved apprenticeship, JTPA regulations, etc.) or occupational requirement that restricts referrals. The legal or occupational requirement should be stated in the job summary section of the ETA-514 form.

When an employer gives an order containing a specification, which discriminates with respect to the above-named factors, the order taker will record on the job order form that specification as well as the information necessary to fill the order. The order taker will then advise the employer that the law and employment services policy prohibit the selection and referral of applicants on the basis of race, color, sex, age, religion, or national origin. In state and local communities, which have a fair employment practice law, the order taker will call the employer's attention to that law and inform him that the law prohibits the employment service from filling the order.

Covered entities should use a system (automated or otherwise) for identifying vacancy announcements that include hiring restrictions based on arrest and/or conviction records.

Those employers who are subject to state or local fair employment practice laws should be reminded of their obligations under these statutes. Employers having federal contracts or other governmental contracts containing nondiscrimination provisions should be reminded of their obligations under those provisions.

Also, the order taker will attempt to persuade the employer to withdraw the discriminatory specification(s) and to hire workers solely on the basis of their qualifications to perform the job. If the employer withdraws the discriminatory specification(s), the order taker will write "withdrawn" in red across the entry of the order form and enter in red below that notation his initials and the date. The order may then be filled. However, the order shall be called to the attention of the manager or supervisor, who will follow up on that and subsequent orders of the

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employer to review the results of referrals to ascertain whether the employer is discriminating in his hiring practices. If the employer refuses to withdraw the discriminatory specification, the order taker will inform him that the local office cannot make referrals on that order placed by him until the discriminatory specification is withdrawn. The order taker will immediately bring the discriminatory order to the attention of the manager or supervisor.

1. **Action required of manager or supervisor** - When an order from an employer who has refused to withdraw a specification discriminating on the basis of Disability, Equal Pay/Compensation, Genetic Information, National Origin, Pregnancy, Race/Color, Religion, Retaliation, Sex, Sexual Harassment is called to the attention of the manager or supervisor, he/she will immediately notify all local office staff, by an appropriate method or system.

The local office manager or supervisor will then take action to obtain a withdrawal of this discriminatory specification and the assurance of nondiscriminatory hiring practices by the employer. If it is determined, based on the order takers recommendation, that the employer does not fully understand E.S. policy regarding discriminatory orders, arrangements can be made to visit with the employer to discuss the employer's reasons for the discriminatory specification(s) and to provide him with information that will be persuasive in getting him to withdraw the specification and to adopt a nondiscriminatory hiring policy.

To make an effective presentation, the manager or supervisor can assemble pertinent information on the local job market situation; the availability of qualified minority workers; the successful experience of other employers, both local and nonlocal, in utilizing minority workers with other workers; and the advantages accruing to the employer, the community, and the nation from nondiscriminatory employment practices.

If a visit is deemed appropriate, the manager or supervisor will present this information to him in the most effective manner possible, and he will offer the assistance of the local office in working out problems that may occur in the introduction and adjustment of minority workers into the employer's work force.

If the employer refuses to remove the discriminatory specification(s) or withdraw the job order, the office manager will notify the Employment Security Administrator, in writing through the Chief of Field Direction and Management, of the employer's actions. The State Administrative Office will initiate discontinuation of service procedures. Once the discontinuation of service procedures are completed, the manager will place the employer's name on appropriate log and withhold all services until re-instated by the State Administrative Office.

2. **Basis for Discontinuation of Services** - Federal Regulation 20 CFR, Part 653, Subpart 658.501, lists the following reasons for discontinuation of services to employers who:

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- i. Submit and refuse to alter or withdraw job orders containing specifications, which are contrary to employment related laws.
- ii. Submit job orders and refuse to provide assurances, in accordance with 603.501(d) that the jobs offered are in compliance with employment related laws, or to withdraw such job orders;
- iii. 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.
- iv. 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 the Job Service by the enforcement agency;
- v. Are found to have violated Job Service Regulations pursuant to 658.416(d) (4);
- vi. Refuse to accept qualified workers referred through the clearance system;
- vii. Refuse to cooperate in the conduct of field checks conducted pursuant to 653.503; or
- viii. Repeatedly cause the initiation of procedures for discontinuation of services pursuant to paragraphs 2I through VI of this section.

The State Agency may discontinue services immediately, if, in the judgment of the State Administrator, exhausted of the administrative procedures set forth in this subpart at 658.501 through 658.502 would cause substantial harm to significant numbers of workers.

Basis for Discontinuation of Services continued-

3. **Initiation of Discontinuation of Services Procedures** - The local office manager will notify the Employment Service Administrator, through the Chief of Field Direction and Management, of the actions by employers that warrant the initiation of the discontinuation of service procedures. The appropriate State Administrative Office staff will take the necessary steps.

Federal Contractor Job Listing (FCJL) also known as Mandatory Job Listings

Federal Contractors and subcontractors are required by law to list immediately all their employment openings with the local state employment office. Employers who receive Federal Contracts of \$100,000 or more are required by law to list job openings with the local state employment office.

Federal contractors/subcontractors can list job openings directly with US.Jobs (<http://us.jobs> or <http://nevada.us.jobs>.) Electronic direct entry is an alternative to listing openings with the local employment service offices. Allowing Federal contractors/subcontractors to directly enter jobs on US.Jobs fulfills the mandatory listing requirements under Title 38 USC (Section 4212).