

# **Job Order Policies and Procedures**

## **Revised April 15, 2003**

### **Preface**

In the last year, job order staff have requested clarification of some job order policies that were released in Job Service Communiqué 13-01. In addition, some revisions, additions, and changes were needed in order to fully explain how job orders will be handled in Wisconsin. The Quality Job Order Workgroup, which was already meeting to develop a training curriculum, was given the task of revising and expanding upon the information contained in Job Service Communiqué 13-01.

**This policy document takes effect immediately and is in effect until further notice.**

**This policy document replaces Job Service Communiqué 13-01 and the Job Order Policies and Procedures issued in September 2002.**

Note: For assistance in answering questions, refer to the Contact Information near the end of this document.

### **Introduction**

This document provides direction on JobNet job order policies and procedures. Use this as the first source of technical assistance when questions arise regarding official policy or procedures on JobNet job orders. If this document does not answer a job order related question, consult a local supervisor or other designated local staff. Contact the Department of Workforce Development (DWD), Division of Workforce Solutions (DWS) Central Office if the question cannot be answered locally (Central Office phone numbers are included in the Contact Information section near the end of this document).

The current JobNet system, built and maintained by DWS, is the cornerstone of the labor exchange system in Wisconsin. It is important that accurate job orders are listed on JobNet so job seekers and employers are connected in a proper and timely fashion. The quality of job orders is especially important now, given our self-service system and the high number of job seekers who use the Internet.

Job seekers and employers must trust the information found on JobNet. If not, job seekers will resort to other methods of finding employment and employers will go elsewhere to recruit qualified applicants for their job openings. To ensure job order integrity, all job orders will be reviewed by Job Center staff and verified for accuracy, honesty and compliance with this policy document and appropriate labor laws. A quality job order will provide complete, accurate and factual information about the job. It will be written so that the general public can understand the job. JobNet is a government web site and must be held to the highest standards.

All job orders must:

- Clearly and accurately represent the employment situation.
- Comply with appropriate laws and represent an actual job opening.
- Be current.
- Be processed as soon as possible.
- Be verified to ensure that a vacancy still exists. Local resources will dictate specific procedures on job order follow up.

Job order services will be provided to all bona fide employers engaging in legal business. Job orders that do not comply with this policy will be denied service.

***The policies and procedures contained in this document are the job order policies and procedures of the Department of Workforce Development's Division of Workforce Solutions.***

## **Job Order Actions Required**

Job Service District Directors will work with Workforce Development Board Directors to ensure that:

- All Job Center partner agencies shall be made aware of this policy document.
- All Job Center partner agencies involved in writing and servicing job orders will provide this policy to their staff.
- All local Job Center partners shall abide by these policies and procedures.

**The following job order policies and procedures are divided into two sections:**

**Section A. Job Order Entry Policies and Procedures** includes policies and procedures that may unfold as a job order is being processed.

**Section B. Other Job Order Issues** includes issues regarding job orders that might occur in the job order process. Some issues in this section are reasons to not accept a job order.

**Section C.** This includes other resources includes the process for policy and procedure issue resolution, a list of Central Office contacts, reference lists and an index to this policy document (by topical area).

## **Section A. Job Order Entry Policies and Procedures**

### **A1. Abbreviations**

Abbreviations and technical jargon should be discouraged and not be used unless necessary. They may only be used when information is specific to an occupation or when specific requirements are necessary. Common industry or occupational abbreviations should be used (e.g., driver's license requirements such as "HAZMAT CDL," computer languages such as "HTML," etc.) Whenever possible, use abbreviations and words that are commonly understood by the general public.

### **A2. Affirmative Action Employer**

Affirmative Action employers are required to hire new employees to remedy past actions. An Affirmative Action employer seeks applicants who are members of a specified group, which for some reason of past custom, historical practice or other non-occupationally valid purposes have been discouraged from entering certain occupational fields.

Most employers will know if they are Affirmative Action employers. If they are, check "yes" for the Affirmative Action question in the Reporting section of the job order.

Listing a job with Job Service only does not satisfy an Affirmative Action directive from the U.S. Equal Employment Opportunity Commission (EEOC). The employer should refer to their Affirmative Action Plan for more information.

#### *References:*

- <http://www.vets100.cudenver.edu/>
- U.S. EEOC website listed in Additional References

### **A3. Apprenticeship**

Apprenticeship opportunities combine elements of both jobs and training. Its key component is paid work, although closely supervised and combined with various training activities, and it typically results in high quality skilled jobs for trainees. This provides important access for our job seeker customers to the skilled trades. It also broadens the number and kinds of applicants who may apply for the training to the benefit of both apprenticeship committees and employers.

Apprenticeship opportunities provided by local apprenticeship committees will be treated as job openings and should be placed on JobNet. In some cases, the final employer of an apprentice may not be known at the time the opening is announced, so the local apprenticeship committee is identified as the employer on these job orders. Note that this is an exception to the policy requiring job orders to have actual job openings and applies only to apprentices sponsored by State of Wisconsin-recognized apprenticeship committees. This exception should not be applied to other training situations.

#### **A4. Casual Employment and Day Labor**

Casual employment and day labor are short-term jobs that occur on an irregular or intermittent basis for a business.

Example: A trucking company needs help unloading a semi-truck.

Job orders from a business or an individual engaged in a business activity which requests short-term labor may be accepted. Job orders must meet the same minimum requirements as any other job order. The employment must meet applicable state and federal laws.

##### *References:*

- Wisconsin Administrative Code, Chapter 272
- Wisconsin Minimum Wage Guide, ERD-39-P (R 12/89)

#### **A5. Coding Job Orders by Duration and Occupational Group**

Job orders should be coded using the appropriate occupational code or codes. When coding a job order, consider the situation, the type of work, the O\*Net code, and how best to connect the employer and the job seeker.

Part-time jobs should be assigned a part-time code (711 – Part-time Service, 712 – Part-time Sales, or 713 – Other part-time). Temporary jobs of less than 150 days duration should be assigned code 723 – Other Temporary Jobs. Jobs with a specific end date or that logically are seasonal should be assigned code 722 – Seasonal Jobs.

**In addition, these job orders should also be assigned an occupational code to maximize qualified job seeker responses to the job order.**

#### **A6. Compensation Methods (Commission, Performance-based, Incentive, and Piecework Jobs)**

State law requires that all employees be paid at least minimum wage for all covered employment regardless of the method of compensation. A job order should clearly state the method of compensation: salary, salary plus commission, straight commission (also known as commission only), performance-based, incentive, or piecework. To be listed on JobNet, all job orders must provide total compensation of at least the minimum wage for any hours worked or spent in required training. **Jobs that pay straight commission cannot be included if they only pay when a product is sold, and do not guarantee the worker at least a minimum wage for the hours worked.**

Employers should be informed at the time of listing that the minimum wage law applies.

Example: When an insurance sales representative is paid a straight commission, the job order cannot be listed on JobNet unless it guarantees at least minimum wage for

hours worked or spent in required training. Only jobs that guarantee at least minimum wage for hours worked or spent in required training can be listed on JobNet.

If a job listing indicates that a draw against commission is received, the job can only be listed on JobNet if the employer guarantees minimum wage for the hours worked or spent in required training after the draw. A draw is usually compensation that has to be paid back to the employer by being subtracted from future commissions.

The following statement must be placed in the Additional Compensation Information text field for commission job orders:

All methods of compensation must guarantee at least minimum wage as required by Wisconsin State Law.

*Current wage rates can be found at:*

- [http://www.dwd.state.wi.us/er/labor\\_standards\\_bureau/minimum\\_wage.htm](http://www.dwd.state.wi.us/er/labor_standards_bureau/minimum_wage.htm)

*References:*

- Wisconsin Statute, Chapter 104, Minimum Wage
- Wisconsin Administrative Rules, Chapter 272, Minimum Wage

## **A7. Company Profiles**

Quality job orders should include factual information about the company, their products or services, and available advancement opportunities. It should not contain misleading or overly optimistic statements. Order taking staff should work with employers to ensure that the company profiles are worded honestly and clearly.

## **A8. Domestic Service Employment**

"Domestic service employment" means all services related to the care of persons or maintenance of a private household. Some examples include butlers, housekeepers, gardeners, nannies, cooks, shoveling snow, raking leaves, babysitting, mowing lawns, or other odd jobs.

Job orders for domestic service openings are acceptable as long as they meet the requirements stated in this policy document. In addition, they must meet applicable state and federal laws. Staff should also advise the private individual that the Job Center does not screen applicants or do background checks.

## **A9. Employer Name**

In order to obtain accurate information for reporting and system management, employers must be accurately identified. For the benefit of job applicants, the name that appears on the job order should be the commonly recognized name of the local work site.

The Employer Record System (ERS) and the Wisconsin Job Order System (WJOS) require use of the correct employer names and work site locations. Staff must maintain the accuracy of these systems including appropriate employer name, UI account number and work site locations.

Note: If the name on the employer record in the ERS database has changed, or doesn't accurately reflect what the business is known as locally, staff should update the employer record as follows:

- Leave the Profile Legal Name alone - DO NOT CHANGE
- Update the Profile Trade Name to what the business is known as locally
- Update the Site Trade Name to what the business is known as locally

*The link in the WJOS manual regarding employer searches is:*

- <http://www.dwd.state.wi.us/dws/manuals/wjos/srchstrgy.htm>

## **A10. Federal Contractors and Subcontractors**

Any business with a federal contract or subcontract (including private employment agencies providing staff) of \$25,000 or more must take Affirmative Action to hire and promote qualified special disabled veterans, veterans of the Vietnam era and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Contractors and subcontractors are required to list all employment openings with their local state employment security agency except for executive or top management jobs, positions filled from within the organization, and jobs lasting 3 days or less. The Wisconsin Job Service Bureau encourages employers to list their openings with the local Job Centers. Companies listing with America's Job Bank (AJB) do satisfy this requirement. Companies must still actively search out these veteran groups to interview for their openings. Veteran's service staff can assist the employer by file searching and referring qualified veterans.

The Job Service Bureau maintains a web site that lists the federal contractors and subcontractors in Wisconsin. The current list of federal contractors and subcontractors can be found at: [http://www.dwd.state.wi.us/dws/manuals/ers/contractors\\_list.htm](http://www.dwd.state.wi.us/dws/manuals/ers/contractors_list.htm)

The web site was created as a working tool for all job order writing staff. Staff must regularly refer to this site to identify all federal contractors and subcontractors. When federal contractors and subcontractors are identified, staff must indicate this on the job order by checking "yes" to answer the Federal Contractor question in the Reporting

section of the job order. In addition, Local Veteran Employment Representatives (LVERs) and Department of Labor Veterans Employment and Training Service staff will be monitoring job orders to ensure that the orders are being identified correctly.

### **A11. Job Order Form DWSB-8926, Mandatory Use**

In cases where an employer cannot or chooses not to use online direct order entry, staff must use this DWSB-8926 form to collect information from the employer. This form has been standardized for use in Wisconsin and designed to collect all the information needed to write a complete and comprehensive job order. For ease of data entry, the format of DWSB-8926 is similar to the format of WJOS.

The Job Order Form is available at the DWD Workweb Forms Repository Site. Job Centers may customize the following fields on the form: "Return to" Job Center address, phone number and fax information and the "Attention" line for Job Center staff name. The remainder of the form cannot be changed.

### **A12. Job Titles**

Job titles should be commonly accepted names of occupations. In situations where the employer's job title is not clear to the general public, job order staff should encourage the employer to clarify it. Explain to the employer that a misleading job title may result in recruitment of the wrong candidates. Reference O\*Net for suggestions of more appropriate or commonly used titles. If the employer is not willing to change the job title, suggest placing the more commonly used job title in the Job Title field and place the employer's job title in the Job Duties & Responsibilities text field or the Additional Application Instructions text field. Explain that it is also important that job titles be commonly recognized for key word searches and resume search functions to work effectively for job seekers.

When the job title is not related to the job duties, coding must reflect the job *duties*, not the title. Clarification should again be sought from the employer to ensure that the proper O\*Net and JobNet Occupational codes are assigned. Reference O\*Net for suggestions of more appropriate or commonly used job titles and/or job duties.

When a job title is too long to fit into the Job Title field on the job order, logically abbreviate one or more words so the job title fits into the field. List the entire job title in the Duties and Responsibilities field of the job order.

*Reference:*

- Occupational Information Network (O\*NET): <http://online.onetcenter.org>

### **A13. Location of Work Site**

The location of the work site must be in Wisconsin or in a bordering county in Illinois, Iowa, Michigan or Minnesota. Employers with positions located elsewhere should be referred to their state's employment security agency or to America's Job Bank.

### **A14. Military Recruitment**

Only military jobs with work sites in Wisconsin should be accepted. The majority of these positions will be in the Reserves or the National Guard. A separate job order must be written for each job classification.

Applicants should be informed that military job requirements include passing a rigorous physical exam, enlisting in the military and that applicants must be between the ages of 17 and 35.

All military job orders must have the following disclosure statement in the Duties and Responsibilities field of the job order:

This position requires enlistment in the Armed Forces of the United States.
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### **A15. Negotiable Wages**

Staff should always encourage employers to list at least the minimum wage they are willing to pay, even when the maximum starting pay is "negotiable". This will save time and effort for both the employer and the job seeker if the wage is not acceptable to the job seeker. When a wage is only listed as "negotiable", it may be interpreted by job seekers as having low-paying or substandard wages.

When a job order lists the wage as "negotiable", it is recommended that staff contact the employer to encourage them to include more specific wage information.

### **A16. Private Employment Agencies (includes Temporary and Direct Hire)**

Private employment agencies may be referred to by a number of names such as temp agencies, temporary agencies, staffing services or placement services. Private employment agencies offer employers a variety of services which may be referred to by terms such as "temp-to-hire", "temp-to perm", "temporary staffing", or "direct hire." Job order staff need to understand the nature of the service being offered by the private employment agency, rather than depending upon the name assigned to the service or the agency, when making decisions related to listing these openings.

## Temporary

Private employment agencies are employers and have a right to list their job vacancies on JobNet when they are recruiting employees who will be on their payroll while performing work for another employer. The agency is the legal employer of record. Employees are issued W-2 tax statements by the private agency at the end of the year or term of employment, whichever comes first.

Job orders can be accepted from private agencies and handled as any other job order. **Efforts should be made to ensure that there is an actual job vacancy** and that the recruitment adheres to the policies and procedures relating to labor disputes, federal contractors, independent contractors, etc. For this reason, staff must obtain the name of the work site employer and enter that information in the “Staff Comments” field in WJOS. If staff have doubts, this information can be used to verify with the work site employer that an actual vacancy exists, that a labor dispute is not in progress and that Affirmative Action requirements are met. **The work site employer name should not be shared with job seekers.** Staff must indicate “yes” to the question “Is this job order a recruitment for an employer by a Staffing Agency?” in the Order Management section of the job order form in order to activate the “EA” (Employment Agency) icon on JobNet.

Job orders placed by private employment agencies may be called “temp-to-perm” or “temp-to-hire” openings. If the duration of the job is expected to be less than 150 days, treat the job order as a temporary position with the private agency and code as such when selecting a JobNet Occupational Code. The job order should also be assigned an occupational code (see **A5. Coding Job Orders by Duration and Occupational Group**). No fee should be charged to the job applicant.

The following statement must be placed in the “Job Duties and Responsibilities” field of the job order:

This position is listed by a private employment agency. The agency is the legal employer. No fee will be charged of the job applicant.
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## Direct Hire

Private employment agencies may also act as an agent for other businesses to recruit employees who work directly for the other business. These situations are often referred to as “direct hires.” Private agencies may list job orders to recruit for other employers in these situations, with certain restrictions. They are not the legal employers of record.

To accept a job order from a private agency where the agency is acting only as a recruiting agent, the name of the actual employer must be provided to job order staff. The name of the actual employer must appear in the area for employer name and address in the Employer Demographics section of the job order unless

it is a **suppressed job order** (In the event the private employment agency indicates that their client, the “actual” employer, does not wish to have their name appear on the order, list the opening as a suppressed order. A suppressed order does not show the employer name and address and, as with all direct hire orders, referral instructions will instruct job seekers to apply through the private employment agent or staffing service. For more information, see **A17. Suppressed Job Orders**).

Staff should indicate in the Staff Comments field that this is a “direct hire” and the referral instructions should direct job seekers to the private employment agency. Staff must indicate “yes” to the question “Is this job order a recruitment for an employer by a Staffing Agency?” in the Order Management section of the job order form in order to activate the Employment Agency icon on JobNet. If the job is expected to last over 150 days, assign occupational codes based on the occupation, duration of the job, and hours per week. No fee should be charged to the job applicant.

The following statement must be placed in the Duties and Responsibilities text field of the job order:

This position is listed by a private employment agency. The agency is not the legal employer; it is recruiting for the actual legal employer. No fee will be charged of the job applicant.

## **Employee Leasing and PEOs**

A Professional Employer Organization (PEO) is a company that contractually assumes and manages human resource and personnel responsibilities by establishing, maintaining, and sharing an employer/employee relationship with a work site company. This is essentially employee leasing (although providers of these services may object to the term “employee leasing”). PEOs are legal business entities. The PEO is usually the employer of record and is responsible for payroll, taxes, WC, UI and other human resource functions including recruitment, hiring and firing. The work site co-employer is responsible for assigning duties, supervising, evaluating performance and related employer functions.

PEO and employee leasing arrangements that otherwise fit the guidelines of this policy are acceptable as job orders. Although they may appear to be temporary staffing agencies, they are different.

Staffing agencies may function in the role of a PEO (or may have subdivisions of the company that function as PEOs) in addition to providing other temporary staffing services. When a staffing agency is functioning as a PEO, and tells our staff they will be the employer of record, staff shall treat the staffing agency as a PEO.

Either company may be listed as the employer on the job order. Probably the PEO will be the preferred name. The work site company name must be provided to Job Center staff. Because a third party agency is involved, the EA icon will be used. The job order will be coded as appropriate for the occupation, hours, and/or duration of the job. Employee leasing and PEO jobs will not be listed in the temporary category unless the job is less than 150 days in duration.

The following statement must be placed in the “Duties and Responsibilities” field of the job order:

This position is listed by an employee leasing company or by a private employment agency. The company or agency is a legal co-employer with the work site company.

*References:*

- Chapter 105 Wisconsin Statutes: Employment Agents located at <http://www.legis.state.wi.us/statutes/01Stat0105.pdf>

### **A17. Suppressed Job Orders**

A suppressed job order does not have the name, address, or any other identifying information about the employer displayed to the public. Suppressing a job order protects legitimate employer needs for confidentiality. Suppressing job orders should be used judiciously, as it is counter productive to the effectiveness of a self-service system. Some job seekers may avoid applying when the employer name is not listed.

Suppressed job orders should contain specific information concerning the method for applying in the Application Instructions field, including names, addresses, or phone numbers, as appropriate.

**Staff should treat suppressed job orders with care so as not to reveal the name of the employer nor any other identifying information to job seekers.**

With the implementation of the Wisconsin Job Order System, confidential orders no longer exist and will not be used. Data contained in the shared data base for the Wisconsin Job Order System and the Employer Record System shall not be manipulated or altered to protect the employer’s identity. Specific instructions for entering suppressed job orders in WJOS are found in the WJOS Manual.

*The WJOS Manual can be found at:*

- <http://www.dwd.state.wi.us/dws/manuals/wjos/default.htm>

## **A18. Tipped Occupations**

Wisconsin state law requires that all employees be paid at least minimum wage for all covered employment regardless of the method of compensation.

Tipped occupations have a special minimum wage. State law requires that TOTAL compensation (wages PLUS tips) be equal to or exceed the general minimum wage. The employer is responsible to make up the difference in the absence of adequate tip compensation.

Examples: Waiters, waitresses, bell hops, taxi cab drivers, barbers, or cosmetologists.

The following statement must be placed in the Additional Compensation Information text field for job orders for waitpersons and other tipped compensation employees:

Compensation for tipped occupations must, on average – including both the hourly wage and tips – equal or exceed the general minimum wage.

*Current wage rates can be found at:*

- [http://www.dwd.state.wi.us/er/labor\\_standards\\_bureau/minimum\\_wage.htm](http://www.dwd.state.wi.us/er/labor_standards_bureau/minimum_wage.htm)

*Reference:*

- Chapter 104 Wisconsin Statutes

## **A19. Veteran's Priority**

Veteran's priority is mandated on all job orders. Federal law requires that veterans receive "priority" in job referrals. This means that all qualified veterans have an opportunity to view the job opening before non-veterans. To accomplish this, a 24-hour hold is placed on each job order. Registered veterans using touchscreen JobNet can see jobs on veteran's hold. Internet JobNet users and non-veterans are not able to see these jobs while they are on veteran's hold.

Veteran service staff have the ability to extend the hold beyond the 24-hour period, if deemed necessary to satisfy the veteran's priority law. Veteran service staff have also been instructed to "file search" good paying job orders in addition to the 24-hour hold. This helps to ensure maximum veteran's priority.

## **A20. Work Site vs. Recruitment Area**

Jobs should only be listed in the county or counties where the work will be performed. Do not confuse the work site (location of the work) with "recruitment area."

Employers interested in recruitment outside the work site location should be reminded that job seekers can search for jobs statewide, or in other counties, if they are interested in relocation or commuting.

There may be situations where it is appropriate to list a job in multiple work sites. Examples are:

- Territorial sales or management positions where there is no set location.
- Positions where there is no required or defined work site location.
- Positions where the work site (city) is located in two or more counties (for example, Appleton, Wisconsin Dells, Watertown, Waupun, etc.).

## **Section B. Other Job Order Issues**

### **B1. America's Job Bank**

All job orders, except suppressed orders, are automatically posted on America's Job Bank (AJB).

*Reference:*

- America's Job Bank at <http://www.ajb.org>

### **B2. Complaints about Job Orders**

When a complaint, question, or concern is raised about a job order, the staff person receiving the complaint should always try to address the concern in an honest, accurate, and informative manner. If the complainant is not satisfied with the answer, then he/she should be directed to the next level of management, to the local Job Service Complaint Specialist, or to the local Job Center complaints coordinator, depending on local procedure.

Note: The Job Service Bureau has a formal Job Service Complaint System including U.S. Department of Labor complaint forms. Both employers and job seekers can use the complaint system. Each Job Service District has a designated complaint specialist available for consultation and assistance. The roster of complaint coordinators can be found at: <http://www.dwd.state.wi.us/dws/staff/complaints/roster.htm>.

### **B3. Continuous Listing and Open Recruitment**

A job order must represent a *definite, bona fide job opening*. Listing continuous job orders, where the employer is continually hiring, is appropriate as long as a bona fide job opening or openings exist. Employers should be cautioned that continuous listings may be less effective and their use should be discouraged. When continuous listings are used, they should be updated frequently. JobNet will default to close job openings after 30 days, although an order may remain open on JobNet for up to 90 days.

**Do not accept job orders that will be used solely for the purpose of building résumé or job application files.**

*An employer who is aware of a retirement, expansion, or similar situation and is reasonably certain there will be a bona fide job opening within the next 90 days can list the anticipated opportunity on JobNet. If the employer is not willing to state that they are reasonably certain a job opening will be available within 90 days, the employer must not be allowed to post a job order on JobNet. Instruct the employer to call when they are reasonably certain that there will be an opening within 90 days.*

Civil service, county, city, and similar opportunities can be listed on JobNet if the employing unit is reasonably certain of a bona fide job opening within 90 days. If the employing unit is building an eligibility list for an anticipated job opening, the job order should clearly state that in the Job Duties & Responsibilities field.

#### **B4. Discrimination**

Job orders that are not in compliance with all applicable state or federal employment laws will not be accepted. This includes all state and federal wage and hour laws, child labor laws, discrimination laws and disability laws.

When a question arises about the legality of a job order, staff must follow the process for policy and procedures issue resolution that is outlined just after Section B of this document.

#### **B5. Employment Testing**

Job Service and other Job Center staff should not administer employment tests for employers until and unless it has been determined the tests are valid and standardized. The DWD Director of Counseling and Testing can assist staff to make this determination.

To avoid potential liability, employment testing should not be conducted in Job Centers until this determination is made even when staff are not involved in the administration. The requirement to participate in an employment testing can be mentioned in job orders if the test is relevant to the job.

#### **B6. Fees, Investments, and Purchases as a Condition of Employment**

Job orders will not be accepted when the employer or agent of the employer requires the applicant to pay a fee to apply for, be referred to, or be considered for employment. Universal access to basic labor exchange services will be at no cost to job seekers.

Referrals to private employment agencies are permitted as long as the applicant is not charged a fee.

Monetary investments and purchases of employment related items are not considered fees. Employment situations involving investments or purchases may or may not be

acceptable depending on the circumstances involved. Investments or purchases that primarily benefit the employer, cover the costs of the hiring process, or would commonly be considered the employer's cost of doing business are unacceptable for a job order. Investments or purchases that are primarily personal, benefit the employee, are a cost of entering an occupation, or that are usable in other employment or personal situations are acceptable for a job order. Important factors in making these decisions are ownership of the item, control of the item, and transferability to other employment situations. Staff should exercise professional judgement and look at the whole employment situation in making these decisions.

Examples of unacceptable costs to the applicant include:

- Paying for employment tests such as personality surveys, aptitude tests, skill assessments or civil service tests.
- Paying for background checks.
- Purchasing sales inventory (raises an issue of the situation being self-employment).
- Purchasing sales kits that are specific to the company.
- Purchasing safety equipment that would reasonably be considered a cost of doing business.
- Drug testing and medical examinations as a condition of employment are required by law to be paid for by the employer. The job order will clearly state any requirement for pre-employment medical testing.

Examples of acceptable costs to the applicant include:

- Professional or occupational licenses such as nursing certificates, insurance licenses, teaching certificates and CDL driving licenses.
- Occupational certifications normally obtained as part of a vocational training program.
- Tools in occupations that normally own their own tools such as mechanics and the construction trades.
- Uniforms, clothing, or safety items that are common to the occupation such as nursing uniforms, safety shoes, gloves, or professional clothing.
- On-the-job use of personal vehicles where mileage is reimbursed.

Any requirements for purchases or use of personal property should be clearly stated on the job order.

*References:*

- Wagner-Peyser Act (29 USC sec 49L)
- Workforce Investment Act (Title I sec 195 para 5)
- 20 CFR 661.410, b2

## **B7. Foreign Labor Certification**

The Department of Labor, through the Foreign Labor Certification Program, administers the first step in the process of obtaining a work authorization card for an alien. The program ensures that there are no U.S. workers available, and that the wages are prevailing for the occupation. The advertising, posting, and job order submittal are undertaken at the direction of the labor certification office.

As part of the recruitment process, job orders are filed with the Wisconsin Job Service, and are entered and serviced by the Foreign Labor Certification Coordinator in the Central Office. These orders are suppressed to ensure that all resumes are sent through the Central Office for review and not directly to the employer.

**These job orders are not to be updated, closed or otherwise modified by local field staff.**

## **B8. Independent Contractor Opportunities**

The purpose of the public labor exchange is to facilitate employment. Job orders will only be accepted that offer employment opportunities where an employer-employee relationship will exist. Independent contractor opportunities are self-employment, which represent *business opportunities*, rather than employment. The individual is responsible for paying his/her own quarterly income taxes, disability insurance in lieu of Worker's Compensation, Social Security taxes, Unemployment Insurance taxes, and other such costs of doing business. **Such requests cannot be accepted as job orders.**

One test used to distinguish an independent contractor opportunity from legal employment opportunity is:

- If the employee is issued an IRS Form W-2, it is employment.
- If the individual is issued an IRS Form 1099, it is an independent contractor opportunity.

Examples of Independent Contractors:

- Home-based businesses such as Tupperware, Stanley Products, Amway, etc.
- Independent Insurance Agents
- Real Estate Brokers
- Truck Drivers who are owner/operators

Note: These examples are not inclusive but represent some occupations that usually are considered independent contractors.

*References:*

- 20 CFR 651.10, 20, 30 and 50
- USC 29 Section 49

## **B9. Independent Contractor Opportunities at Job Fairs**

Independent Contractors will not be permitted to participate in **Job Service led** Job Fairs.

For example, in one Job Center, a company looking for independent insurance sales representatives would not be able to participate in the Job Fair because Job Service manages the event. However, in another Job Center, the Job Center Team hosts the Job Fair with Job Service playing only a small role in managing and coordinating the event. The company is allowed to participate in this Job Fair because the Job Center Team managing the Job Fair allows it.

## **B10. Labor Disputes**

Job orders will not be accepted for positions that are vacant due to a labor dispute, strike or lockout.

When a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage, staff shall verify that a labor dispute exists and determine if the position is involved in the labor dispute. If the position is not involved in the labor dispute, the job order can be written. If it is involved, the job order cannot be accepted.

Staff shall resume full job order taking services when they are sure that the labor dispute has been terminated.

Local Job Center staff should call the Job Service Bureau policy staff in the Central Office to notify them of any labor dispute. The Central Office will notify the federal authorities if that is required by Federal Regulations.

The following statement must be placed in the “Job Duties and Responsibilities” text field of a job order:

This position is with a company currently involved with a labor dispute. This position is NOT part of the dispute and the person hired will NOT be replacing an employee involved with the labor dispute.

### *Reference:*

- Code of Federal Regulations, 20CFR 652.9

## **B11. On-site Recruitment**

An employer who does on-site recruitment at a Job Center must have a job order listed on JobNet at the time of the recruitment.

## **B12. Timeliness**

Job orders should be entered (or reviewed and approved, if entered by the employer) into WJOS on the same day that the job order is received and no later than the next business day. Orders shall be verified for accuracy of content immediately. Promptly close all job orders when filled.

## **B13. Training or Work Experience Opportunities**

Work that is primarily a training or work experience opportunity must NOT be listed on JobNet. Agencies who offer individuals the opportunity to gain work experience, work readiness, training, job development, skill building or similar activities are not to be included as jobs on JobNet. However, the kinds of opportunities mentioned above can be posted in Job Centers and Job Center staff can distribute information about them.

To determine if an opportunity is appropriate for JobNet, three criteria should be considered: 1) Does an employee-employer relationship exist between the worksite organization and the worker? 2) Is the work activity primarily intended to provide experience, build work readiness, overcome employment barriers, develop employment skills, or directly connected to a course of study? OR, is it primarily work that has an entry level, training, OJT, or apprenticeship component? 3) Is the opportunity available to the general public? Is there a need to advertise the opportunity outside of existing program participants to recruit candidates? If no real employer-employee relationship exists, the activity is primarily training focused and the general public cannot apply, the opportunity is inappropriate for, and should not be listed on, JobNet.

One exception to this is Apprenticeship opportunities as explained in Section A3 of this policy document.

## **B14. Unusual Job Orders**

JobNet and the services of Job Service are paid for entirely by public funds. For this reason, Job Service reserves the right to refuse or discontinue the listing of a job order that is contrary to community standards of good taste or decency, is misleading, or appears to involve conduct that violates state law.

If a job order writer who is authorized to make the determination decides that a job order should be refused or discontinued under the policy stated above, the job order writer shall notify the Job Service Supervisor for the local office, who will notify the person who submitted the job order. The submitter may request a review. The review will be conducted by the Director of the Job Service Bureau or the Director's designee and the DWD Office of Legal Counsel.

## Process for Policy & Procedure Issue Resolution:

Local Job Order Responsible Staff who need technical assistance to resolve a job order policy issue or have related questions should:

1. Consult the Job Order Policies and Procedures Document for relevant guidance.
2. If policy exists follow the process listed.
3. If no applicable policy is available, discuss the issue with the Job Service supervisor or another designated Job Service staff person for your local office. Ask for guidance and follow his/her direction.
4. If additional assistance is needed, contact the designated Central Office staff (listed below) for advice. As needed, Central Office staff will consult with DWD Legal Counsel for guidance.
5. Based on the advice from the Central Office, follow the instructions on how to proceed with the job order and inform the employer when necessary.

## Contact Information

### For general job order policy questions:

Philip Anderson  
*Employer Specialist*  
*Bureau of Workforce Programs*

TEL 608.261.6974  
FAX 608.267.0330  
EMAIL Philip.Anderson@dwd.state.wi.us

Bertram Tanudjaja  
*IT Coordinator*  
*Job Service Bureau*

TEL 608.267.7276  
FAX 608.261.6956  
EMAIL Bertram.Tanudjaja@dwd.state.wi.us

### For WJOS technical questions:

Linda Williamson  
*Employer Specialist*  
*Bureau of Workforce Programs*

TEL 608.264.8167  
FAX 608.267.0330  
EMAIL Linda.Williamson@dwd.state.wi.us

### For questions about Employment Testing:

Roger Gantzarow  
*Director of Counseling and Testing*  
*Bureau of Workforce Programs*

TEL 608.266.8390  
FAX 608.267.0330  
EMAIL Roger.Gantzarow@dwd.state.wi.us

### For questions about Foreign Labor Certification:

Mike Brooks  
*Foreign Labor Certification*  
*Migrant Services Bureau*

TEL 608.266.0017  
FAX 608.261.8506  
EMAIL Mike.Brooks@dwd.state.wi.us

### For questions about the Job Service Complaint System:

Raúl Reyes  
*State Monitor Advocate*  
*Job Service Bureau*

TEL 608.261.6545  
FAX 608.261.6956  
EMAIL Raul.Reyes@dwd.state.wi.us

# References:

## Federal and DOL Resources

**Wagner-Peyser Act of 1933 (29 U.S.C. 49 et seq.)**

<http://www4.law.cornell.edu/uscode/29/ch4B.html>

**Workforce Investment Act of 1998 (29 U.S.C. 49 et seq.)**

<http://www.doleta.gov/usworkforce/asp/policy.asp>

**20 CFR Part 651 et al. Workforce Investment Act Final Rules**

[http://www.access.gpo.gov/nara/cfr/waisidx\\_00/20cfr651\\_00.html](http://www.access.gpo.gov/nara/cfr/waisidx_00/20cfr651_00.html)

**Occupational Information Network (O\*NET)**

<http://online.onetcenter.org>

**America's Job Bank**

<http://www.ajb.org>

**Title 38, Chapter 42 USC: Veterans Benefits**

[http://uscode.house.gov/title\\_38.htm](http://uscode.house.gov/title_38.htm)

**Americans with Disabilities Act of 1990 (PL 101-336)**

<http://www.usdoj.gov/crt/ada/adahom1.htm>

**Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.)**

<http://www.dol.gov/esa/regs/statutes/whd/0002.fair.pdf>

**Immigration Act of 1990 (PL 101-649)**

<http://www.ins.gov/lpBin/lpext.dll/inserts/publaw/publaw-2713?f=templates&fn=document-frame.htm#publaw-pl101649>

**Employment Law Guide: DOL site on laws, regulations, and technical assistance services for businesses.**

<http://www.dol.gov/asp/programs/handbook/contents.htm>

**E-laws Advisor: DOL site with interactive tools that provide information about Federal employment laws.**

<http://www.dol.gov/elaws>

**DOL Summary of Major Laws: Summary of the major laws administered by DOL in plain language.**

<http://www.dol.gov/opa/aboutdol/lawsprog.htm>

**Code of Federal Regulations (CFR): DOL site with E&T related CFR by agency or chapter**

<http://www.dol.gov/dol/regs/cfr/main.htm>

**U.S. Statutes: Search for Federal laws by common name or Title number.**  
<http://www4.law.cornell.edu/uscode>

## **Related Federal Agency Resources**

**Immigration and Naturalization Service: INS On-line provides information for businesses and workers.**  
<http://www.ins.gov/graphics/index.htm>

**Social Security Administration: On-line Social Security Handbook. Plain language explanations of SS rules.**  
[http://www.ssa.gov/OP\\_Home/handbook/ssa-hbk.htm](http://www.ssa.gov/OP_Home/handbook/ssa-hbk.htm)

**U.S. Equal Employment Opportunity Commission: Information for businesses that provides a basic introduction to rights and responsibilities under federal equal employment opportunity laws.**  
<http://www.eeoc.gov/qs-employers.html>

## **State Resources**

**Wisconsin Job Order System (WJOS) Manual – available online at:**  
<http://www.dwd.state.wi.us/dws/manuals/wjos/default.htm>

**Employer Record System (ERS) Manual – available online at:**  
<http://www.dwd.state.wi.us/dws/manuals/ers/default.htm>

**Chapter 103 Wisconsin Statutes: Employment Regulations**  
<http://www.legis.state.wi.us/statutes/01Stat0103.pdf>

**Chapter 104 Wisconsin Statutes: Minimum Wage Law**  
<http://www.legis.state.wi.us/statutes/01Stat0104.pdf>

**Chapter 105 Wisconsin Statutes: Employment Agents**  
<http://www.legis.state.wi.us/statutes/01Stat0105.pdf>

**Wisconsin Equal Rights Division: Links to Wisconsin labor law information, text of laws, Administrative code, forms and publications.**  
<http://www.dwd.state.wi.us/er>

**Wisconsin ER Division Publications: Download pamphlets on WI Labor laws and equal right complaints.**  
[http://www.dwd.state.wi.us/er/equal\\_rights\\_division/publications.htm](http://www.dwd.state.wi.us/er/equal_rights_division/publications.htm)

**Wisconsin Statutes**  
[http://folio.legis.state.wi.us/cgi-bin/om\\_isapi.dll?clientID=73993&infobase=stats.nfo&jump=ch.%20103](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=73993&infobase=stats.nfo&jump=ch.%20103)

## **Information and Fact Sheets**

**Are my workers employees? Information on making independent contractor determinations.**

<http://www.dol.gov/elaws/esa/flsa/scope/er13.asp>

**Domestic employment and Social Security: This SSA site gives information on when domestic services are covered.**

[http://www.ssa.gov/OP\\_Home/handbook/handbook.09/handbook-0915.html](http://www.ssa.gov/OP_Home/handbook/handbook.09/handbook-0915.html)

**Equal Opportunity Fact Sheets: EEOC publications and fact sheets on discrimination, fair employment and ADA issues. Includes enforcement guides for employers.**

<http://www.eeoc.gov/publications.html>

## **Other Resources**

**DOL Telephone Contacts: DOL toll free numbers to ask questions about DOL programs.**

<http://www.dol.gov/dol/contact/contact-phonenumber.htm>

**Small Business Advisor: Small Business Administration web site for assisting entrepreneurs.**

<http://www.business.gov>

**Federal Employment Posters**

<http://www.dol.gov/elaws/posters.htm>

**Wisconsin workplace poster information.**

<http://www.dwd.state.wi.us/dwd/posters.htm>

Note: The above links are accurate as of the writing of document. There is no guarantee that any of these links will remain correct in the future.

### NOTE:

This job order policy document can be found on the DWD Web site at:

[www.dwd.state.wi.us/dws/staff/job\\_order/policies\\_procedures/default](http://www.dwd.state.wi.us/dws/staff/job_order/policies_procedures/default)