

**Kansas Department of Commerce
Workforce Development Division
Policies and Procedures Manual**

Policy Number: 5-15-00

Originating Office: Regulatory Compliance

Subject: Migrant and Seasonal Farmworker (MSFW) Outreach/Monitor Advocate Program

Issued: October 26, 2016

Programs: Workforce Innovation and Opportunities Act (WIOA).

Purpose: To transmit state policy and guidance regarding provision of services to Migrant and Seasonal Farmworkers (MSFWs).

References: Federal regulations found at 20 CFR Parts 651, 653, and 658, promulgated in response to the court order in the case of NAACP v. Marshall, Civil Action No. 2010-72, United States District Court; and the Workforce Innovation and Opportunities Act 20 CFR Part 652.

Background: None.

Action: Make this policy available to all persons who provide services through the Kansas workforce delivery system.

Contact: Questions should be directed to Steve Ramirez (785) 296-5014, e-mail steve.ramirez@ks.gov.

Attachments: None.

Migrant and Seasonal Farmworker (MSFW) Outreach/Monitor Advocate Program

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Migrant and Seasonal Farmworker (MSFW) Outreach/Monitor Advocate Program

Policy

Activities undertaken by the Kansas Department of Commerce State Monitor Advocate and by the Workforce Centers (herein referred to as Workforce Centers) will be performed in a manner consistent with applicable federal and state laws and regulations, as well as U.S. Department of Labor (USDOL) guidance, directives, and technical assistance documents as may be issued for this program.

All States are required to ensure that services provided to Migrant and Seasonal Farmworkers (MSFWs) are “qualitatively equivalent and quantitatively proportionate” to the services provided to other jobseekers. This means that MSFWs should receive all workforce development services, benefits and protections on an equitable and non-discriminatory basis (i.e. career guidance, testing, job development, training, and job referral).

States are responsible for ensuring that services provided are in accordance with Federal Regulations (20 CFR 651-658) and the Workforce Innovation and Opportunities Act.

Introduction

Program Authorization

Federal Regulations found at 20 CFR 651, 653, and 658, *Federal Register*, June 10, 1980, promulgated in response to the court order in the case of NAACP v. Marshall, Civil Action No. 2010-72 of the United States District Court.

USDOL Webpage: <http://www.doleta.gov/programs/MSFW/>

Kansas Webpages: <http://crc.kansascommerce.com/msfw/Pages/default.aspx>

And;

<https://kansasmonitoradvocate.wordpress.com/>

Overview

Regulations, found at 20 CFR Parts 651, 653, and 658, provide that agencies shall make job order information conspicuous and available to MSFWs in all Workforce Centers and operate an outreach program for the purpose of contacting MSFWs who are not being reached by a Workforce Center’s normal intake activities and informing them of the available services. Additionally, Workforce Centers having a significant MSFW population within their administrative area may be designated to undertake especially vigorous outreach to the MSFW population. Local Workforce Development Area’s (Local Area’s) outreach plans are included in their ~~Workforce Investment Act~~ Workforce Innovation and Opportunities Act.

The regulations also established the State Monitor Advocate (SMA) system to conduct oversight and advocacy on behalf of MSFWs. The SMA oversees the delivery of specific MSFW services to ensure the required equity measures are properly administered and enforced.

Participant Eligibility & Selected Definitions (20 CFR.651.7)

Any job seeker is eligible for services provided by WIOA Title III.

Agricultural worker – a worker, whose primary work experience has been in farm work in industries with a Standard Industrial Classification (SIC) of 01-07 (01/Agricultural Production-Crops; 02/Agricultural Production –Livestock and Animal Specialties); 07/Agricultural Services), except 027 (Animal Specialties), 074 (Veterinary Services), 0752 (Animal Specialty Services, Except Veterinary), and 078 (Landscape and Horticultural Services), whether alien or citizen, who is legally allowed to work in the United States.

Clearance – activities in the placement process involving joint action of local offices in different labor market areas and/or States in the location, selection and the job referral of an applicant.

Complaint – a representation made or referred to a State or local Workforce Center of a violation of the regulations and/or other federal, State or local employment related law.

Complainant – the individual, employer, organization, association, or other entity filing a complaint.

Day-haul – the assembly of workers at a pick-up point waiting to be employed, transportation of them to farm employment, and the return of the workers to the pick-up point on the same day. For the purposes of this definition “day-haul” shall exclude transportation and return of workers employed under regularly scheduled job orders such as corn detasseling jobs for youth.

Farm work – work performed for wages in agricultural production or agricultural services in establishments included in industries 01--Agricultural Production-Crops; 02--Agricultural Production-Livestock excluding 027--Animal Specialties; 07--Agricultural Services excluding 074--Veterinary Services, 0752--Animal Specialty Services, and 078--Landscape and Horticultural Services, as defined in the most recent edition of the Standard Industrial Classification (SIC) Code definitions.

Farmworker – see Agricultural worker.

Intrastate job order – a job order describing one or more hard-to-fill job openings, which a Workforce Center uses to request recruitment assistance from other Workforce Centers within the State.

Migrant farmworker – a seasonal farmworker who had to travel to do the farm work so that he/she was unable to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

Migrant food processing worker – a person who during the preceding 12 months has worked at least an aggregate of 25 or more days or parts of days in which some work was performed in food processing (as classified in the 1972 Standard Industrial Classification (SIC) definitions 201, 2033, 2035, and 2037 for food processing establishments), earned at least half of his/her earned income from processing work and was not employed in food processing year round by the same employer, provided that the food processing required travel such that the worker was unable to return to his/her

permanent residence in the same day. Migrant food processing workers who are full-time students but who travel in organized groups rather than with their families are excluded.

MSFW – a migrant farmworker, a migrant food processing worker, or a seasonal farmworker.

Seasonal Farm worker – a person who during the preceding 12 months worked at least an aggregate of 25 or more days or parts of days in which some work was performed in farm work, earned at least half of his/her income from farm work, and was not employed in farm work year round by the same employer. A farm labor contractor is not considered an employer. Non-migrant individuals who are full-time students are excluded.

Program Services

Program requirements include provision of basic employment related services; performance of outreach; Workforce Center monitoring; MSFW advocacy and program coordination; processing of agricultural job orders through the Agricultural Recruitment (clearance) System; and maintenance of the Complaint System.

Agricultural Recruitment System (ARS)

The WIOA Title III requires that the United States Employment Service maintain a system for the orderly movement of workers within and between States. The ARS helps agricultural employers recruit qualified workers on a temporary or seasonal basis. They provide protection to the workers who are not seeking permanent relocation, but rather temporary agricultural employment.

Key regulatory provisions can be found at 20 CFR 653.500 - 653.503. Through the ARS, State Workforce Agencies can systematically recruit and refer qualified workers from within a State and from other States when there is an anticipated shortage of workers. These regulations provide the system for agricultural or food processing clearance orders which request workers for less than one year of employment. They are based on USDOL's policy of requiring specific assurances and information within each job order.

Kansas policy direction for the Agricultural Recruitment System will be issued under separate cover. Information about the Agricultural Recruitment System can be found at the following USDOL ETA webpage: **[Agricultural Recruitment System \(ARS\)](#)**.

Complaint System

Policy direction for the Complaint System will be issued under separate cover. Questions about processing complaints may be directed to the State Monitor Advocate.

In the interim, any complaint resulting from activities funded by WIOA should be processed under the Local Workforce Investment Area's WIOA Complaint System.

Staff Responsibilities

MSFW Outreach Worker

The MSFW outreach worker's primary responsibility is to visit MSFWs and their families not reached through a Workforce Center's normal intake activities at their living, working, and gathering areas. The MSFW outreach worker shall provide information to MSFWs, by means of written and oral presentations, in a language readily understood by them.

After making any informative presentation, MSFW outreach workers shall encourage MSFWs to obtain the full range of services at the Workforce Center. Under the Workforce Innovation and Opportunities Act of 2014, MSFWs must be provided information about services available through the One-Stop System. These services must include, but are not limited to, core services, intensive services and training opportunities available in each of the Local Workforce Investment Areas.

When performing outreach, outreach workers shall not enter work areas on an employer's property without the employer's permission, unless otherwise authorized to enter by law. Workers' living areas will not be entered without the permission of the workers. Outreach workers shall comply with appropriate State laws regarding access.

Wherever feasible, outreach efforts should be coordinated with public and private community service and MSFW groups. Outreach staff is required to maintain records of daily contacts to include information such as the number of MSFWs contacted, services provided, whether an application or complaint was taken and if a referral was made. During the months when outreach activities are conducted (April – October), monthly summary reports are to be submitted to the State Monitor Advocate.

Basic employment services to MSFWs include but are not limited to:

- Assistance in the preparation of applications;
- Referrals to specific employment opportunities;
- Information about upcoming employment opportunities;
- Assistance in the preparation of complaints;
- Receipt and subsequent referral of complaints to the Workforce Center complaint specialist or Workforce Center manager;
- Referral to supportive services for which the individual or a family member may be eligible; and
- Assistance in making appointments and arranging transportation for individual MSFWs or members of their family to and from Workforce Centers or other appropriate agencies.

SERVICES DO NOT INCLUDE:

- Referring applicants to Farm Labor Contractors (crew leaders) who do not have a current Crew Leader Registration Card.
- Accepting job orders from Farm Labor Contractors who do not have a current Crew Leader Registration Card.
- Referring applicants to clearance orders unless the required housing has been inspected and approved according to Federal Regulations.

State Monitor Advocate

The State Monitor Advocate’s responsibilities are outlined by federal regulations found at 20 CFR 653.108. These responsibilities include but are not limited to the following:

- Ensure Workforce Centers are monitored for compliance with MSFW regulations;
- Ensure the Agency’s MSFW Outreach Program and Complaint System are properly functioning;
- Conduct on-going reviews of MSFW data, policies and procedures;
- Review and comment on the State’s Annual MSFW Outreach Plan;
- Prepare MSFW quarterly and annual reports for submission to the United States Department of Labor, Employment and Training Administration (USDOL ETA);
- Establish and maintain contact with representatives from all aspects of the MSFW services community;
- Conduct frequent visits to meet with MSFWs and employers in their living and working areas; and
- Serve as the State-level MSFW Complaint Specialist.

Performance Measures & Reporting

Equity Indicators

Each state's compliance is based on performance of five equity indicators which follow, reconciled to the 9002 A Data Elements. Four of the equity indicators must be met to be in compliance for the program year, the percentage of service to MSFWs must equal the percentage of service to non-MSFWs. The form that allows states to report on the services provided to MSFWs is ETA Form 5148. In accordance with OMB requirements ETA Form 5148 can be submitted electronically through an Internet-based system called the Labor Exchange Agricultural Reporting System (LEARS).

EQUITY INDICATORS	9002 A DATA ELEMENTS
Referred to a job	Replace with “Referred to Employment” (See 9002 A, Column H, Row 15)

Received Some Service	Replace with “Received Staff-Assisted Services” (See 9002 A, Column H, Row 12)
Referred to Supportive Services	Same. See 9002 A, Column H, Row 17
Received Job Development	Replace with “Received Staff-Assisted Services” (See 9002 A, Column H, Row 12)
Received Counseling	Replace with “Career Guidance” (See 9002 A, Column H, Row 13)

Minimum Service Level Indicators

USDOL ETA encourages all States meet at least four of the seven minimum service level indicators set annually by ETA. The indicators are:

- A minimum of 42.5% of the new/renewed MSFW applications must be placed in jobs.
- A minimum of 14% of the new/renewed applications must be placed in jobs with a wage that exceeds the Federal minimum wage by at least .50 cents an hour.
- A minimum of 5.2% of the new/renewed MSFW applications must be placed in long-term nonagricultural jobs.
- One hundred percent of significant area offices must be reviewed by State and/or Federal staff.
- Field Checks must be conducted on a minimum of 25% of all agricultural clearance orders on which Job Service placements are made.
- Workforce Center outreach staff shall contact a minimum of five MSFWs per staff day.
- No more than 10% of MSFW complaints shall remain unresolved (unless referred to an enforcement agency, pending hearing, or pending additional information requested from the complainant).

MIC Report Availability

Migrant Indicators of Compliance (MIC) reports are generated on a quarterly basis by America’s Job Link Alliance (AJLA) and reported to USDOL ETA by the State Monitor Advocate via the LEARS reporting system. AJLA reports include all equity and minimum service level indicators captured by the State’s information system. Other indicators are gathered through Workforce Center reports or administrative files.

Reports, by State, Local Area, or Workforce Center are available to staff via the “reporting” options within KansasWorks.com for information and self-monitoring purposes.

Related Federal and State Programs

Strong interaction exists between the MSFW Outreach Program and various other programs, laws, and regulations, including, but not limited to the following:

The **Kansas Department of Labor, Employment Standards** enforces Kansas labor laws including articles found within Kansas Statute Annotated (KSA) 44-125 addressing protection of

employees in agriculturally-related work and wage payment to migrant workers. Text of the KSA is as follows:

Chapter 44.--LABOR AND INDUSTRIES

Article 1.--PROTECTION OF EMPLOYEES

44-125. Definitions. As used in this act, the following words shall have the meaning respectively ascribed to them herein:

(a) "Migrant worker" means any person who is a nonresident of Kansas and who is employed temporarily in agriculturally-related work involving seasonal labor requiring his migration from one area to another in order to gain employment but shall not mean any person who is employed by any custom combine operator.

(b) "Crew chief" means any person, other than an employer, who brings a crew or group of migrant workers into the state of Kansas or is responsible for finding employment for them but shall not mean any custom combine operator.

History: L. 1974, ch. 202, § 1; July 1.

44-126. Wage payment. Any employer employing migrant workers, or any employee of an employer responsible for the payment of wages to migrant workers, shall make such payments directly to the individual worker and no such payment shall be made to a crew chief.

History: L. 1974, ch. 202, § 2; July 1.

44-127. Crew chief registration; information to state employment service. Any crew chief who brings any migrant worker into the state of Kansas or who is responsible for any migrant worker within the state of Kansas shall register with a local Kansas state employment service office. Upon registering, such crew chief shall furnish to such office a list of names and social security numbers of all migrant workers he serves in his capacity as crew chief and the names of those for whom recruitment is being done.

History: L. 1974, ch. 202, § 3; July 1.

44-128. Availability of information furnished. Any information filed with the local Kansas state employment service office pursuant to the provisions of K.S.A. 44-127 shall be made available to the public upon request.

History: L. 1974, ch. 202, § 4; July 1.

44-129. Violation of act. Any violation of this act shall be a class C misdemeanor. Any crew chief found to be in violation of this act shall cease to operate as a crew chief in this state for a period of two (2) years.

History: L. 1974, ch. 202, § 5; July 1.

The **H-2A Labor Certification Program**, administered by the Kansas Department of Commerce, allows employer importation of temporary agricultural workers on a non-immigrant status. Local Workforce Center staff members are responsible for assisting in preparation of job orders, recruitment of local workers, and conducting necessary housing inspections prior to certification by the regional certification officer. The following link provides information detailing the labor certification process.

- <http://www.workforcesecurity.doleta.gov/foreign/h-2a.asp>

The **USDOL Occupational Safety and Health Administration (OSHA)** establish standards for employer provided housing used under the ARS and/or H-2A program. Housing must be inspected according to OSHA Standards for Temporary Labor Camps found at Standard 1910.142. Workforce Center local housing inspectors perform all necessary inspections.

- http://www.osha-slc.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9791

The **USDOL Wage and Hour Division** enforce the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The Workforce Centers' major role in conjunction with MSPA is registration of Farm Labor Contractors (crew leaders). To date, the United States Employment Service is the sole agent for crew leader registration. Local law enforcement agencies should be used for completion of necessary fingerprint cards. Before an office can refer a Farm Labor Contractor to an employer, a valid certification or identification card must be displayed.

Confirmation of FLC status is available by phoning the USDOL Federal Wage and Hour District Office at (913) 551-5721. Workforce Centers in need of registration forms or more information regarding Farm Labor Contractors' requirements should contact the State Monitor Advocate.

The Wage and Hour Division also maintains a list of individuals who, for various compliance reasons, are ineligible to engage in any activity as a FLC or as a Farm Labor Contractor Employee (FLCE) as defined by MSPA. This list is updated on a continual basis; it can be found online at: http://www.dol.gov/esa/regs/statutes/whd/mspa_debar.htm.

- <http://www.dol.gov/esa/whd/mspa/index.htm>

The **WIOA National Farmworkers Jobs Program (NFJP)** is administered by state and local grantees funded directly by the USDOL ETA National Office. Similar to services provided under WIOA Title I Employment and Training Services for adult workers, but specific to MSFWs, the mission of this program is to empower migrant and other seasonally-employed farmworkers and their families to achieve economic self-sufficiency by providing services that address their employment

related needs. SER Corporation administers this WIOA and One-Stop partner program in Kansas. The following link provides information on the NFJP program.

- <https://www.doleta.gov/Farmworker/>
- <http://www.sercorp.com/>

Nationally, Worker Protection Standards are administered by the **Environmental Protection Agency (EPA)** administers Worker Protection Standards while the **Kansas Department of Agriculture** administers the Standards at the state level. The Workforce Centers' major role is to accept written complaints pertaining to suspected pesticide-related violations for forwarding to the Kansas Department of Agriculture. The following links provide Federal/State information about Worker Protection Standards.

- <http://www.epa.gov/pesticides/safety/workers/workers.htm>
- <http://agriculture.ks.gov/ksda-services/complaint-form/pesticide-application-complaint>

The **Kansas Department of Health and Environment** administers the Statewide Farmworker Health Program which provides primary health services to farmworkers through the State's county health departments. This voucher program makes use of case managers who provide farmworker clients with holistic health services. The following link provides information about this health program.

- <http://www.kdhe.state.ks.us/olrh/FW.html>

Other Related Kansas Web Links

Harvest America Corporation: <http://www.harvestamerica.org/>

United Methodist Mexican American Ministries: <http://www.ummam.org/>

El Centro, Inc.: <http://www.elcentroinc.com/>

UMOS (Kansas Migrant Head Start): <http://www.umos.org/>

Kansas Department of Education Federal Programs (includes bilingual/ESL/and migrant education information): <http://www.ksde.org/sfp/fedprogcontpg.htm>

Other Related Federal Web Links

DOJ, Office of Special Counsel for Immigration Related Unfair Employment Practices: <http://www.usdoj.gov/crt/osc/index.html>

FBI, Involuntary Servitude: <http://www.fbi.gov/hq/cid/civilrights/slavery.htm>

US Education Migrant Education Programs: <http://www.ed.gov/programs/mep/index.html>

US HUD Farmworkers and Colonia Communities: <http://www.hud.gov/groups/farmworkers.cfm>

Social Security Administration (If You Are a Farmworker): <http://www.ssa.gov/pubs/10074.html>