# Kansas Department of Commerce
# Workforce Development
# Policy and Procedures Manual

**Policy Number:** 5-16-00

**Originating Office:** Workforce Development

**Subject:** Title III, Workforce Innovation and Opportunity Act (WIOA)

**Issued:** October 26, 2016

**Revised:** September 13, 2016

**Program:** Workforce Innovation and Opportunity Act and the Wagner-Peyser Act

**Purpose:** To update the existing policy to reflect changes enacted by the Workforce Innovation and Opportunity Act.

**References:** 20 CFR 651-654 and 658; 20 CFR Part 652, Establishment and Functioning of State Employment Services; Age Discrimination Act of 1967 as Amended; Americans With Disabilities Act of 1990; Kansas Combined State Plan for WIOA and Title III; KSA 44-705(a) of the Employment Security Law; PL 107-288 Jobs for Veterans Act; Rehabilitation Act of 1973; The Civil Rights Act of 1964 as Amended; The Wagner-Peyser Act, as amended (29 U.S.C. 49 *et seq*); Training and Employment Guidance Letter (TEGL) No. 3-15; Unemployment Insurance Program Letter (UIPL) 7-16; Vietnam Era Veterans Readjustment Act of 1974; and WIOA Sec. 134(d)(2)(B);

**Background:** The Wagner-Peyser Act establishes a nationwide system of public employment service to match qualified job candidates with employers. The Act was amended by Title III of Workforce Innovation and Opportunity Act of 2014. Title III calls for stronger partnerships with Employment Services to seek new avenues to enhance the seamless delivery of services in the One-Stop system.

**Action:** Make policy available to all Wagner-Peyser staff, One-Stop partners, and other interested parties.

**Contacts:** Questions should be directed to WIOA Administrator, (785) 296-0607, email: workforcesvcs@ks.gov.

**Attachments:**

A –**KANSAS**WORKS Workforce Center Map
B –Self-Service Tracker

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# Wagner-Peyser Funded Services

## Background

The Wagner-Peyser Act establishes a nationwide public employment service system to match qualified job candidates with employers. Changes have occurred as a result of Title III of the Workforce Innovation and Opportunity Act, but the labor exchange service (bringing together qualified job candidates and employers) continues as the basic purpose and mandate of the Wagner-Peyser Act.

Federal regulations require (at a minimum) each state to administer a labor exchange system that has the following capacities:

- Assist job candidates in finding employment;
- Assist employers in filling jobs;
- Facilitate the match between job candidates and employers;
- Participate in a system for clearing labor between the states, including the use of standardized classification systems issued by the U.S. Secretary of Labor under Section 15 of the Wagner-Peyser Act; and
- Meet the work test requirements of the State unemployment compensation system.

## Wagner-Peyser Role in One-Stop System

Wagner-Peyser is a required partner in the One-Stop delivery system and is subject to the following provisions relating to such partners:

- Wagner-Peyser labor exchange services must be provided in the One-Stop delivery system in accordance with WIOA Sec. 121(e)(3) and Title III of the Workforce Innovation and Opportunity Act, including the requirement that Employment Service offices be co-located with One-Stop centers ;
- The state agency with responsibility for Wagner-Peyser services must be represented on each Local Workforce Development Board and be party to a Memorandum of Understanding described at WIOA Section 121(c) and (h) 20 CFR 662.300 addressing the operation of the One-Stop delivery system; and
- The state agency with responsibility for Wagner-Peyser services must be represented on the State Board.[1]

The concept of a One-Stop center is to provide a single location for individuals seeking employment and training services, thus making the process of locating and accessing employment services more efficient and seamless. The One-Stop delivery system envisions a partnership in which Wagner-Peyser services are coordinated with activities provided by other partners in a One-Stop setting.

## State Merit-Staff

Staff delivering labor exchange services funded by the Wagner-Peyser Act, and those providing services to veterans, must be part of the merit-based system providing protections as required by law. As part of a local Memorandum of Understanding, the Department of Commerce may agree to have public merit-staff employees receive guidance from the One-Stop operator regarding the provision of labor exchange services. Such guidance must be consistent with the provisions of the Workforce Innovation and

[1] In Kansas, the state agency responsible for Wagner-Peyser services is the Department of Commerce.

Opportunity Act and the Wagner-Peyser Act. Personnel matters for state merit-staff employees are the responsibility of Commerce.

Employees in unclassified positions, in most cases, are selected by the appointing authority and approved and appointed by the Governor. Employees in unclassified positions do not have appeal rights to the Civil Service Board and are considered "at will" employees. These employees are not placed on the pay matrix but are paid at a salary approved by the Governor.

**Funding**

The federal unemployment tax is part of the federal and state program under the Federal Unemployment Tax Act (FUTA) that pays unemployment compensation to workers who lose their jobs. FUTA tax also pays the costs to administer Wagner-Peyser programs and services. The Department of Commerce retains responsibility for all funds authorized under the Wagner-Peyser Act, including those funds authorized under Section 7(a) required for providing the services and activities delivered as part of the One-Stop delivery system.

**Allowable Activities**

Ninety percent of the sum allotted to the state is reserved under Section 7(a) of the Wagner-Peyser Act to be used for the following:

- Job search and placement services to job seekers, including unemployment insurance claimants. Such services include counseling, testing, occupational and labor market information, assessment, and referral to employers;

- Appropriate recruitment services and special technical services for employers (Wagner-Peyser funds may not be used for newspaper advertising for high paying jobs unless the state submits a report to the U.S. Secretary of Labor concerning justifications of such advertising); and

- Any of the following activities:
    - Evaluating programs;
    - Developing linkages between services funded under the Wagner-Peyser Act and related Federal or State legislation, including the provision of labor exchange services at educational sites;
    - Providing services for workers who have received notice of permanent layoff or impending layoff, or workers in occupations experiencing limited demand due to technological change, impact of imports, or plant closures;
    - Developing and providing labor market and occupational information;
    - Developing a management information system and compiling and analyzing reports; and
    - Administering the work test for the State unemployment compensation system, including making eligibility assessments and providing job finding and placement services for unemployment insurance claimants.
    - Providing unemployment insurance claimants with referrals to, and application assistance for, training and education resources and programs.

Ten percent of the sum allotted to the state is reserved under the Wagner-Peyser Act for use by the Governor for the following categories of activities:

- Performance incentives for Workforce Service Centers and programs consistent with the performance accountability measures that are based on indicators described in the Workforce Innovation and Opportunity Act taking into account direct or indirect placements (including those resulting from self-directed job search or group job search activities assisted by such Workforce Center or programs), wages on entered employment, retention, and other appropriate factors;

- Services for groups with special needs, carried out pursuant to joint agreements between the Department of Commerce and appropriate Local Boards and chief elected officials or other public agencies or private nonprofit organizations; and

- Paying the extra costs of exemplary models for delivering services of the types described in section 7(a), and models for enhancing professional development and career advancement opportunities of State agency staff.

In addition to the services and activities otherwise authorized by the Wagner-Peyser Act, the Department of Commerce may perform such other services and activities specified in contracts for payment or reimbursement of costs made with the U.S. Secretary of Labor or with any federal, state, or local public agency, or administrative entity under the Workforce Innovation and Opportunity Act of 2014, or private nonprofit organization.

Funds authorized under the Wagner-Peyser Act section 7(a) must be used to provide basic career services for adults and dislocated workers and may be used to provide individualized career services. Funds authorized under Section 7(b) of the Act may be used to provide basic or individualized career services.

The state has discretion in how it meets the requirement for universal access to services provided under the Wagner-Peyser Act. In exercising this discretion, the state must meet the following requirements:

- Labor exchange services must be available to all employers and job candidates, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farm workers, and individuals with disabilities;

- The state must have the capacity to deliver labor exchange services to employers and job candidates on a statewide basis through the following:

    - Self-service, including virtual services;
    - Facilitated self-help service; and
    - Staff-assisted service.

- In each Local Area, in at least one comprehensive physical center, merit-staff funded under the Wagner-Peyser Act must provide labor exchange services (including staff-assisted labor exchange services) and basic career services and applicable individualized career services.
- Those labor exchange services provided in a Local Area must be described in the Memorandum of Understanding between Commerce and the Local Board.

**Performance Outcomes**

When a Wagner-Peyser funded service beyond eligibility determination is provided to a job candidate, the job candidate becomes a *participant*. However, no formal eligibility determination is required. Registration by itself is not a service. The common performance measures for Wagner-Peyser services are:

- Employment Rate (2nd quarter after exit);
- Employment Rate (4th quarter after exit);
- Median Earnings (2nd quarter after exit); and
- Effectiveness in Serving Employers

For the purposes of common measures, if a One-Stop partner provides a service this extends the date of exit for a Wagner-Peyser participant. For example, if WIOA services are provided to a Wagner-Peyser participant after the participant is hired, the exit date is extended. Because this could affect performance outcomes, it is important for the One-Stop partners to coordinate and communicate with one another about services provided to customers. State Policy #3-31-00, *Data Collection*, provides guidance regarding reporting requirements.

In additional to common measures, Wagner-Peyser is expected to maintain levels of performance for providing services to veterans. State Policy #2-01-05, *Jobs for Veterans Act (JVA) Program*, provides guidance regarding Wagner-Peyser services to veterans.

**Veterans Services**

State Policy #2-01-05, *Jobs for Veterans Act (JVA) Program*, provides guidance regarding Wagner-Peyser services to veterans. Both by law and by regulation, Workforce Service Offices are charged with specific responsibilities for placing veterans in gainful employment. Broadly, these responsibilities involve the following:

1. Provide activities to enhance services to veterans by other providers of Wagner-Peyser activities funded by federal, state, or local government;

2. Provide Wagner-Peyser activities to such veterans that are not adequately provided by other public providers of Wagner-Peyser activities; and

3. Provide outreach and public information activities to develop and promote maximum job and job training opportunities for such veterans and to inform such veterans about employment, job training, on-the-job training and educational opportunities under 29 U.S.C. 2913, 38 U.S.C. 41, and under other provisions of law, which activities shall be coordinated with activities provided through the Workforce Centers.

All Workforce Service Offices will be structured so veterans receive core services through staff funded by Wagner-Peyser. Workforce Service Offices will not be structured where only the DVOP specialist and/or the LVER provide services to veterans. A coordinated effort by the One-Stop partners is essential to ensure all resources are utilized to their best advantage in serving the needs of veterans.

Priority will be provided to qualified veterans when referring individuals to job openings before making those openings available to non-veterans. Qualified job candidates will be referred in the following order:

1. Special disabled veterans;
2. Other disabled veterans;
3. Other eligible veterans in accordance with priorities determined by the USDOL;
4. Certain spouses and other eligible persons; and
5. Non-veterans

Wagner-Peyser services must be available to all job candidates, including veterans. State Policy #2-01-05, *Jobs for Veterans Act (JVA) Program*, provides guidance regarding the statute and scope of the Jobs for Veterans Act requiring priority of service for veterans (and some spouses) who otherwise meet the eligibility requirements for participation in Wagner-Peyser services.

**Non-Discrimination and Equal Opportunity**

Wagner-Peyser services must provide equity in services to all job candidates and employers regardless of age, race, sex, color, religion, national origin, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title-I financially assisted program or activity. Entities that administer Wagner-Peyser Act programs and unemployment insurance programs are among the One-Stop partners listed in WIOA Section 121(b), and are therefore covered by the WIOA nondiscrimination regulations at 29 CFR Part 38.

The following provisions apply specifically to Employment Service operations conducted by **KANSAS**WORKS Employment Service Offices. States shall:

- Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the Wagner-Peyser Act in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief and citizenship.
- Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ).
- Assure that employers' valid affirmative action requests will be accepted and a significant number of qualified applicants from the target group(s) will be included to enable the employer to meet its affirmative action obligations.
- Assure that employment testing programs will comply with all applicable federal regulations.

Wagner-Peyser staff may accept valid affirmative action requests from employers to ensure a significant number of qualified job candidates from target group(s) identified in the request are included to enable the employer to meet their affirmative action obligations.[2] Various laws prohibit listing discriminatory job orders except where the stated requirement is a bona fide occupational qualification.[3] Employers must provide equal

[2] *Affirmative action obligations* - Positive, result-oriented action imposed on or assumed by an employer pursuant to legislation, court order, consent decree, directive of a fair employment practice authority, government contract, grant or loan, or voluntary affirmative action plan adopted pursuant to the Affirmative Action Guidelines of the Equal Employment Opportunity Commission to provide equal employment opportunities for members of a specified group which for reasons of past custom, historical practice, or other non-occupationally valid purposes has been discouraged from entering certain occupational fields.

[3] *Bona Fide Occupational Qualification (BFOQ)* - An employment decision or request based on age, sex, national origin or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an

employment opportunities to job candidates without regard to race, color, religion, sex (including gender identity, sexual orientation and pregnancy), age (40 or older), national origin, disability, or genetic information in compliance with federal[4] and state laws.

State Policy #1-03-01 *WIOA Discrimination Complaint Processing Procedure*, provides guidance regarding procedures that must be followed when a violation of equal employment opportunity and employment standards is suspected. This policy covers all U.S. Department of Labor (USDOL) financially assisted programs, including Wagner-Peyser services. If a job order appears to be discriminatory or inappropriate, questions should be directed to the EO Representative identified in the WIOA Local Plan. If further clarification is necessary, contact the Commerce Workforce Compliance Unit.

If it is determined the job order is discriminatory, **KANSAS**WORKS.com staff or local Wagner-Peyser staff, as appropriate, will notify the employer the job order cannot be accepted unless the discriminatory specification is withdrawn. If the employer refuses to withdraw the specification, the employer will be notified all services shall be suspended until the discrimination issue is resolved.

### Complaint System

The Department of Commerce maintains a complaint system pursuant to Wagner-Peyser regulations. The types of complaints that must be handled to resolution by this complaint system are as follows:

- Complaints against an employer about the specific job to which the applicant was referred by the Workforce Service Office involving violations of the terms and conditions of the job order or employment-related law (employer-related complaint); and
- Complaints about Workforce Service Office actions or omissions under Wagner-Peyser regulations (agency-related complaints).

These complaint procedures are not applicable to unemployment insurance (UI) or WIOA complaints. Complaints alleging violations of UI or WIOA regulations should be handled within the procedures set forth in the respective regulations.

### Inappropriate or Fictitious Job Orders

Any job order listed on **KANSAS**WORKS.com is subject to removal if the information is inappropriate or fictitious. State Policy #5-11-00 *Procedures for Reporting Suspected Program Fraud or Abuse*, provides guidance related to inappropriate or fictitious job orders.

### Independent Contractors

The term “labor exchange” for Wagner-Peyser purposes means an employer-employee relationship exists.

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exception to the general prohibition against discrimination on the basis of age, sex, national origin or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR parts 1604, 1605 and 1627.

[4] https://www1.eeoc.gov//laws/practices/

Job openings may not be listed by independent contractors or their agents (e.g., custom wheat cutters), or for work-at-home or commissioned pay positions unless these job orders meet the requirements set forth in the Fair Labor Standards Act and Kansas laws and regulations regulating employment. There must be an actual employer relationship with respect to the employee as indicated by the fact it hires, pays, fires, supervises, and otherwise controls the work of such employee.[5] Posting a job order or conducting recruitment activities to fill positions as independent contractors could result in an audit exception, recapture of expended funding, and possible administrative or monetary sanctions by the USDOL.

Persons working from their home (sometimes referred to as "telework") are generally independent contractors and are not employees. However, there are some work-from-home positions where employers hire persons as employees. Staff should verify telework job vacancy announcements to ensure the employer is looking for an employee and not an independent contractor.

**Assessment and Testing Services**

The use of tests or assessments by Wagner-Peyser must be in accordance with the provisions of the following:

- 29 CFR part 1627, Records To Be Made or Kept Relating to Age; Notices To Be Posted; Administrative Exemptions;
- USDOL regulations on Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, which have been published as 29 CFR part 32 at 45 FR 66706 (October 7, 1980); and
- 41 CFR parts 60-3, Uniform Guidelines on Employee Selection Procedures.

The above regulations provide guidelines for the proper use of assessments, tests, and other selection procedures used as a basis for employment decisions including referral, hiring, promotion, demotion, and retention. Wagner-Peyser may administer or monitor an employer's testing and assessment procedures, as permitted by USDOL regulations, but may not make referrals or take any other action based on the results. A non-financial agreement should be negotiated with the employer prior to beginning the testing or assessment procedures to document the Workforce Center's efforts to comply with the law (see Attachment A).

**Private Employment Agencies**

The Wagner-Peyser Act allows referral of job candidates to private employment agencies so long as the job candidate is not charged a fee.

**Labor Disputes**

A job candidate may not be referred to a job order that directly or indirectly aids in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage. A job order may be

[5] *Employer* - A person, firm, corporation or other association or organization (1) which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and (2) which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises and otherwise controls the work of such employee. An association of employers shall be considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with the employer member if either shares in exercising one or more of the definitional indicia.

taken from an employer if the order is for a vacancy not affected by the strike and job candidates referred to the employer for said vacancy is notified the employer has an ongoing labor dispute involving other positions.

The Regional Operations Manager should be notified immediately of the existence of a labor dispute resulting in a work stoppage at an establishment involving a significant number of workers or involving multi-establishment employers with other establishments outside Kansas.[6] The Regional Operations Manager shall notify the Commerce administrative office. The Commerce administrative office should notify the USDOL Regional Office who will then advise others as necessary. If a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage the following actions must be taken:

- Verify the existence of the labor dispute and determine its significance with respect to each vacancy listed in the job order;
- Notify all potentially affected One-Stop partners concerning the labor dispute;
- Provide written notification to all job candidates who are referred to jobs openings not at issue in the labor dispute, a labor dispute exists in the employing establishment and the job opening to which the job candidate is being referred is not at issue in the dispute; and
- Continue full referral services when notification the labor dispute has been resolved is received and verified with the employer or the workers' representative(s).

**Services to Job Candidates**

Services to job candidates must be provided in all Workforce Centers based on the customer's choice of self-service, facilitated self-service, or staff-assisted service. To maximize customer choice and to emphasize universal access, each Workforce Service Office must contain a Career Center to provide information and resources in a variety of media. Staff assistance must be readily available in the Career Center to help job candidates utilize the self-service resources provided.

**Tracking Self-Service Activities**

Self-service activities in all Workforce Service Offices and outreach locations must be tracked and recorded in **KANSAS**WORKS.com (Located under Client → Self- Service Tracker). This information is provided to the **KANSAS**WORKS State Board on a quarterly basis for review.

To provide a consistent measurement and comparison of traffic, this information must be gathered through staff observation and face-to-face interaction with customers, and recorded on a daily basis. Communication with customers by telephone, FAX or emails should not be reported. A recommended Self-Service Tracker form to gather data to be transferred into **KANSAS**WORKS is attached to this document (Att. B).

[6] *Establishment* - A public or private economic employing unit generally at a single physical location which produces and/or sells goods or services, for example, a mine, factory, store, farm, orchard or ranch. It is usually engaged in one, or predominantly one, type of commercial or governmental activity. Each branch or subsidiary unit of a large employer in a geographical area or community should be considered an individual establishment, except that all such units in the same physical location is considered a single establishment. A component of an establishment which may not be located in the same physical structure (such as the warehouse of a department store) should also be considered as part of the parent establishment. For the purpose of the ``seasonal farmworker'' definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

**Registration Process**

Any job candidate qualified to work in the United States may register for Wagner-Peyser/WIOA services without regard to place of residence, current employment status, or occupational qualification. The self-registration process in the Workforce Service Office should be monitored to watch for job candidates wanting or needing staff-assisted services. If the job candidate appears to be unable to complete the self-registration process an initial assessment should be conducted.

An initial assessment is a seated interview or meeting between the individual job candidate and Wagner-Peyser staff to assess and document the individual's suitability for a job or for a better job. The initial assessment includes, but is not limited to, gathering and analyzing information about the job seeker's work history, education, interests, needs for supportive services, barriers to employment, and eligibility for other services. The information gathered should be analyzed in relationship to current labor market conditions to determine if the job seeker should continue to receive staff-assisted job search assistance or be referred to other services.

**Protecting Customer Privacy**

To protect the privacy and confidentiality of customer information, Workforce Service Office staff must not provide the **KANSAS**WORKS.com participant identification number (PID), user name or password to a customer unless the customer can provide the correct answer to the security question or provide an acceptable form of identification.

**Job Candidates with Disabilities**

Wagner-Peyser staff must provide universal access and equal opportunity for individuals with disabilities. Local workforce development areas must have a written policy in place that incorporates physical and programmatic access standards and procedures for persons with disabilities. Equal opportunity includes: applying nondiscrimination prohibitions, providing reasonable accommodations and reasonable modifications, administering programs in the most integrated setting appropriate, engaging in effective communication, and ensuring accessibility of programs, facilities, and information and communication technology. State Policy #1-12-01, *Equal Access for Job Seekers with Disabilities*, provides guidance regarding full accessibility.

### Job Candidates with Language Barriers

Wagner-Peyser staff must take reasonable steps to provide labor exchange services and information to limited English proficient job candidates. Failure to meet the needs of limited English speaking individuals may result in unlawful national origin discrimination. Reasonable steps to provide meaningful access to programs may include:

- Written materials in appropriate non-English languages by written translation or by oral interpretation or summarization and;
- Oral content in appropriate non-English languages through in-person interpretation or telephone interpretation.
- Written language access plans to ensure LEP individuals have access to programs.

State Policy #5-14-00, *Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency (LEP),* provides additional guidance regarding assisting limited English proficient job candidates.

### Unemployment Insurance Claimants

Wagner-Peyser funded staff must ensure that UI claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure they make a meaningful and realistic work search. They must also provide information about UI claimants' ability or availability for work, or the suitability of work offered to them, to UI staff.

### Reemployment Services

The Wagner-Peyser Act requires reemployment services be provided to individuals who are required to participate in specific job seeking activities as a condition for receipt of UI benefits. Services must be appropriate to the needs of UI claimants who are referred to reemployment services under any Federal or State UI law.

In Kansas, the Reemployment Services and Eligibility Assessment (RESEA) program provides reemployment services to Unemployment Insurance (UI) claimants identified as most likely to exhaust benefits under the methods established by the Worker Profiling and Reemployment Services (WPRS) program, and transitioning veterans receiving Unemployment Compensation for Ex-service members (UCX) benefits.

Regardless whether a claimant is called in for reemployment services, all claimants should be provided a full range of labor exchange services and basic career services to facilitate their earliest return to work. State Policy #4-02-06 *Reemployment Services for Unemployment Insurance Claimants* provides guidance regarding the provision of reemployment services to unemployment insurance claimants.

### Migrant and Seasonal Farm Worker Services

Wagner-Peyser services, including counseling, testing, and job and training referral services for migrant and seasonal farm workers must be provided qualitatively equivalent and quantitatively proportionate to services provided to persons who are not migrant and seasonal farm workers. State Policy #5-15-00 *Migrant and Seasonal Farm Worker (MSFW) Outreach/Monitor Advocate Program*, provides guidance regarding services and referrals to migrant and seasonal farm workers and processing complaints received from migrants and seasonal farm workers.

**Work Opportunity Tax Credit Services**

Whenever grant funds for the Work Opportunity Tax Credit (WOTC) program are depleted, this program is authorized to charge costs to Wagner-Peyser. State Policy #5-18-00, *Work Opportunity Tax Credit and Program*, provides guidance for the implementation and operation of the WOTC program.

**Federal Bonding**

Federal Bonding is available to assist Wagner-Peyser staff and other partners in placing job candidates who have committed a fraudulent or dishonest act, or who have demonstrated other past behavior that casts doubt upon their credibility or honesty. These individuals often experience a special barrier to gaining employment due to their personal backgrounds. Employers often view these job applicants as being potentially untrustworthy. This fear is further heightened by the fact that fidelity bond insurance commercially purchased by employers to protect against employee dishonesty usually will not cover these job applicants.

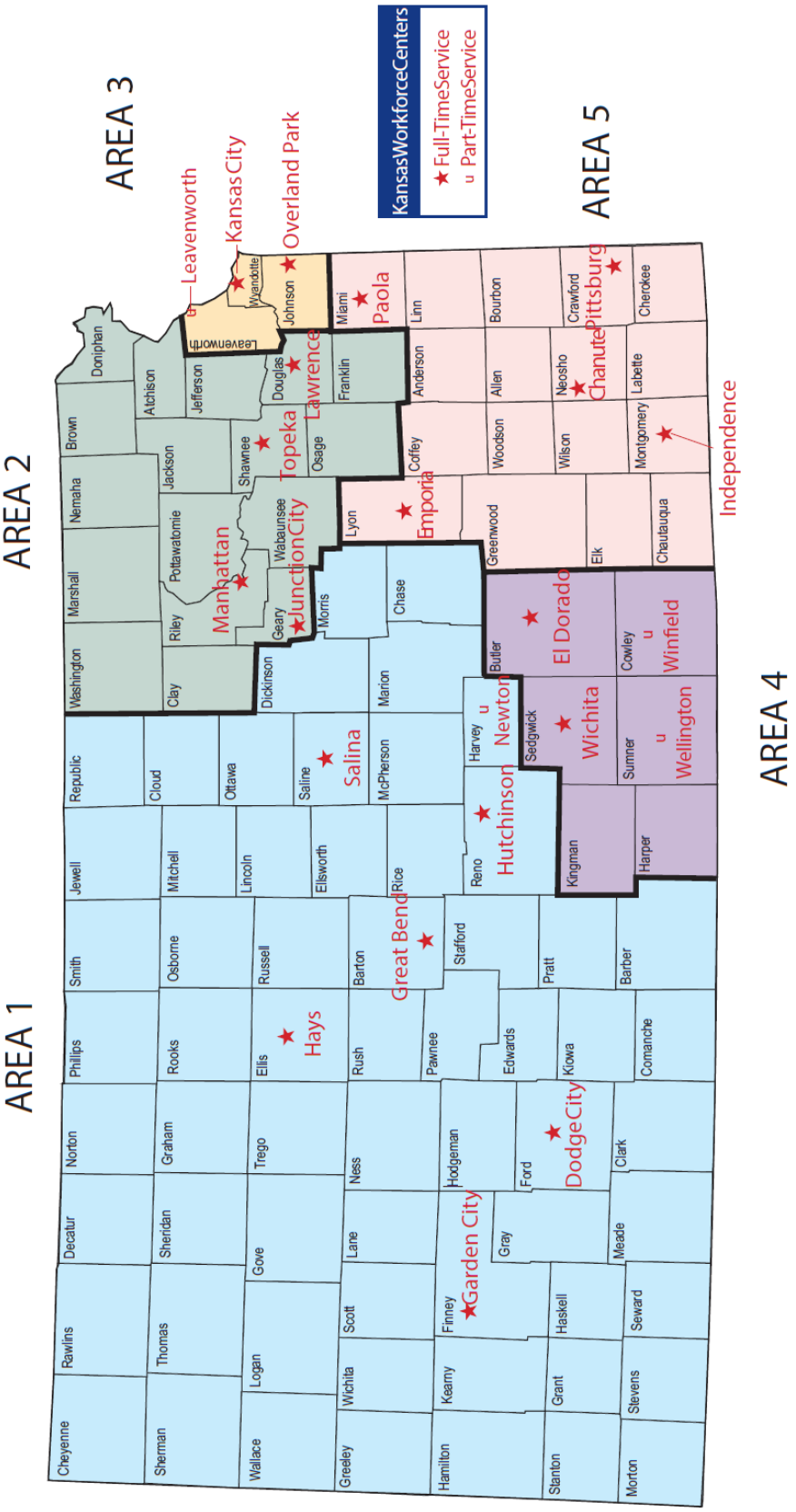
Fidelity bonding is a form of business insurance purchased to indemnify employers for loss of money or property sustained through the dishonest acts of their employees (i.e., theft, forgery, larceny, and embezzlement). This "employee dishonesty insurance" is considered a good business management practice, and is purchased by most employers. However, while other types of insurance set premiums that vary according to the degree of risk, fidelity bond companies usually will not cover at-risk persons. This practice has created a special barrier to employment for a growing number of persons who have encountered the criminal justice system, as well as other persons (e.g., recovering substance abusers, credit risks, etc.) whose personal credibility is questionable due to a deviant past act. As a result, these job applicants are routinely denied employment. The inability to get a job is a major factor contributing to the high rates of initial incarcerations and returns to prison (recidivism). State Policy #5-17-00 *Federal Bonding Program*, provides guidance related to the Federal Bonding program.

**Foreign Labor Certification**

Whenever grant funds for the Federal Labor Certification Program are depleted, this program is authorized to charge costs to Wagner-Peyser. State Policy #5-16-00, *Foreign Labor Certification Program*, provides guidance to providing services to employers through the Foreign Labor Certification Program.

Employers seeking temporary foreign workers under the H-2A program (agricultural) or the H-2B (non-agricultural) must show a good faith effort to find qualified, able, and available U.S. workers. To facilitate this, job orders are opened in **KANSAS**WORKS.com to recruit U.S. workers. The Workforce Centers should refer interested U.S. workers for jobs in which they meet all of the qualifications specified within the job order. The employer can reject U.S. workers only for legitimate non-discriminatory reasons. In some instances, the Workforce Center may be contacted by attorneys or agents representing employers rather than directly by the employers themselves. These job orders are to be treated as regular job orders. The employer must provide the minimum requirements for the job that does not unduly restrict U.S. workers from applying. Nothing in the job order should indicate it has anything to do with an employer's request for foreign labor certification. Wagner-Peyser staff should actively recruit qualified, able, and available U.S. workers to refer to the employer. If any employer refuses the referral of U.S. workers or places unduly restrictive requirements on the job intended to eliminate U.S. workers from being considered this should be reported to the Foreign Labor Certification Manager.

**KANSAS**WORKS **Workforce Center Locations**



| **KANSASWORKS _____ Office** | | | | | | | | | | | | | | |
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| **Date: _____** | | | | | **Check All Services Needed** | | | | | | | | | |
| | **Print First & Last Name** | **Served in the Military ? Yes or No** | **Spouse of current or former Military member? Yes or No** | **Fax/Phone/Copier** | **Job Fair** | **Job Search or Career Guidance** | **Referral To Other Services** | **Resume and/or Cover Letter** | **Testing and/or Assessment** | **Unemployment Services** | **WIOA** | **Workshops/ Applicant Trng.** | **Other Services** |
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