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) Monitor Advocate System

Issued: July 26, 2022

Programs: Wagner-Peyser Act, Title III of the 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: States have a responsibility under the W-Pact regulations to provide employment services, benefits, and protections to MSFWs on a basis that is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

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

Contact: Questions should be directed to Wendy Mongeau, State Monitor Advocate (316) 613-1804, e-mail wendy.mongeau@ks.gov or Shelly Thompson State Operations Director (785) 230-8158, email shelly.thompson@ks.gov.

Attachments: None.

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W-P Migrant and Seasonal Farmworker (MSFW) Monitor Advocate System

Policy

Activities undertaken by the Kansas Department of Commerce State Monitor Advocate (SMA) and by the State Workforce Agencies (herein referred to as KANSASworks 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.

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

System 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: https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4160 And; https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system

Overview

Kansas shall 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).

Participant Eligibility & Selected Definitions (20 CFR.651.1)

Agricultural worker - see Farmworker

Clearance system- means the orderly movement of U.S. job seekers as they are referred through the employment placement process by an ES office. This includes joint action of local ES offices in different labor market areas and/or States.
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.

Employment-related laws- means those laws that relate to the employment relationship, such as those enforced by the Department's WHD, OSHA, or by other Federal, State, or local agencies.

Employment Service (ES) office- means a site that provides Wagner-Peyser Act services as a one-stop partner program. A site must be collocated in a one-stop center consistent with the requirements of §§678.305 through 678.315 of this chapter.

Farmwork - means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, agricultural commodities means all commodities produced on a farm including crude gum (oleoresin) from a living tree products processed by the original producer of the crude gum (oleoresin) from which they are derived, including gum spirits of turpentine and gum rosin. Farmwork also means any service or activity covered under §655.103(c) of this chapter and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter.
Farmworker – see Agricultural worker.

Farmworker - means an individual employed in farmwork, as defined in this section.

Interstate clearance order - means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices in a different State.

Intrastate clearance order - means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices 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- see Migrant Farmworker.

MSFW means a migrant farmworker or a seasonal farmworker.

Outreach - contact means each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from outreach staff.

Outreach staff - means ES staff with the responsibilities described in 20 CFR 653.1

Seasonal farmworker- means an individual who is employed, or was employed in the past 12 months, in farmwork (as defined in this section) of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence. Non-migrant individuals who are full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in farmwork, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year. A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

System Services
System requirements include provision of basic employment related services; performance of outreach; Workforce Center monitoring; MSFW advocacy and system 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

Each KANSASworks Workforce center must determine whether participants are MSFWs as defined at 20 CFR 651.10. Agencies are to make job order information conspicuous and available to MSFWs in all Workforce Centers and must provide MSFWs a list of available career and supportive services in their native language. The state must 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.

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 2016 MSFWs must be provided information about services available through the One-Stop System. These services must include, but are not limited to, career, training and supportive services 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 complete records of their contacts with MSFWs and the services they perform. These records must include

- Number of contacts, the names of contacts (if available),
- Basic employment services provided
- Complaints received and if the complaint or apparent violation was resolved informally or referred to the appropriate enforcement agency
- Requests for career services were received

A copy of these records must be sent monthly to the ES Office Manager and maintained on file for at least 2 years.

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

MSFW Outreach Worker

Each Local Area without a MSFW Outreach Worker will have at a minimum of one MFSW Subject Matter Expert (SME) which will make up a support team for the state's Outreach Worker(s). The SMEs will work with the state's Outreach Worker(s) by:

- Promoting MSFW awareness
- Conduct research of their local area's agriculture industry and MSFWs
- Provide training and updates pertaining to MSFW services, need, barriers, employment trends or relevant information that can help improve the understanding of MSFWs and the agricultural communities
- May provide monthly reports of local MSFW assessment to ES supervisor

ES office manager responsibilities.

Monthly Outreach Report

Each ES Office Manager must file with the SMA a monthly summary report of outreach efforts. These reports must summarize the required information outlined under MSFW Outreach Worker of this page. The ES Office Manager and/or other appropriate staff must assess the performance of outreach staff by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Performance must not be judged solely by the number of contacts made by the outreach staff. The monthly summary report is due no later than the 15th day of the following month. The monthly reports and daily outreach logs must be made available to the SMA and Federal onsite review teams.

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:

- Conduct ongoing review of services and protections to MSFWs by the KANSASworks Workforce Centers for compliance using the procedures at 20 CFR653.108(g)(2)
- Conduct on-going reviews of the state's MSFW data, policies, and procedures
- Review and comment on the State's Annual Agricultural Outreach Plan
- Prepare MSFW quarterly and annual reports for submission to the United States Department of Labor, Employment and Training Administration (USDOL ETA)
- Serve as an advocate to improve services for MSFWs
- Ongoing liaison with the states National Farmworkers Jobs Program (NFJP) grantee and other organizations serving farmworkers, employers, and employer organizations
- Monitor delivery of SWA services with state's MSFWs and agricultural employers in their living and working areas
- Serve as the State-level MSFW Complaint Specialist

Self-Monitoring

In order to keep the State of Kansas in compliance with The Code of Federal Regulations, at 20 CFR 653.108(a), the SWA will require self-monitoring be conducted on a quarterly basis in all AJCs

- Each Regional Operations Manager is to oversee that quarterly self-monitoring for the Migrant Season Farmworkers Advocacy System is completed. Self-monitoring should take place at the end of each quarter and be submitted to the SWA and SMA for review no later than 30 days after the last day of the fiscal quarter. All self-monitoring will be conducted using the MSFWs Quarterly Review packet provided by the SMA.

  Questions about the MSFW Quarterly Review packet may be directed to the State Monitor Advocate.

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 comply 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

To determine if states are in compliance with the equity service level indicators, the SMA will track the services provided to MSFWs versus non MSFWs through the ETA-established reporting of WIOA career services provided to all participants

To meet the equity performance standards the percentage of services provided to MSFWs must be equal to or greater than the percentage of services offered to non-MSFWs. For example, if there are 100 non-MSFWs and 50 MSFWs registered for services in the local ES office, and 50 of the non-MSFW participants are referred to employment, the local office must refer at least 25 (50%) of the MSFWs in order for that office to meet the equity ratio indicator.

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.

- https://www.foreignlaborcert.doleta.gov/h-2a.cfm

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.

- https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.142

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:.

- https://www.dol.gov/agencies/whd/agriculture/mspa

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://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

Department of Commerce - Wagner Peyser Monitor Advocate System - Kansas Department of Commerce (kansascommerce.gov)

Harvest America Corporation: http://harvestamerica.org/

United Methodist Mexican American Ministries:
https://www.greatplainsumc.org/newsdetail/UMMAM-109246

El Centro, Inc.: https://www.elcentroinc.com/

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:

https://www.justice.gov/

FBI, Involuntary Servitude: https://www.fbi.gov/

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

Social Security Administration (If You Are a Farmworker): https://www.ssa.gov/pubs/EN-05-10074.pdf