



Workforce Issuance

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☐ Policy ☒ Information

To: Chief Elected Officials
MassHire Workforce Board Chairs
MassHire Workforce Board Directors
MassHire Career Center Directors
MassHire Fiscal Officers
MDCS Operations Managers

cc: WIOA State Partners

From: Alice Sweeney, Director
MassHire Department of Career Services

Date: July 23, 2020

Subject: **Expanded Recruitment and Advertisement Under H2B Foreign Labor Program**

Purpose: To notify MassHire Workforce Boards, MassHire Career Center Operators and other workforce partners of guidance to MassHire Career Centers regarding expanded recruitment and advertisement requirements under the H-2B Foreign Labor Program. This Information Issuance provides H-2B programmatic guidance to MassHire Career Centers to support State and Federal Foreign Labor Certification activities.

Background: The Immigration and Nationality Act (INA) assigns certain responsibilities to the U.S. Department of Labor (DOL) for employment-based immigration programs. The U.S. DOL Secretary has delegated the nonenforcement responsibilities of these labor certification programs to the OFLC. Accordingly, statutory and regulatory provisions of the labor certification programs administered by OFLC require employers seeking to hire temporary foreign labor to apply to the Secretary for a labor certification. It is the responsibility of U.S. DOL, ETA's Office of Foreign Labor Certification (OFLC), the MassHire Department of Career

Services (MDCS) and the MassHire Career Centers (MCCs) to assist in determining, on a case-by-case basis, whether there are able, willing, and qualified U.S. workers available for jobs. In doing this, it may assist in determining whether there will be any adverse impact on the wages and working conditions of similarly employed U.S. workers, should a labor certification be granted. OFLC is using its existing regulatory authority to take the following administrative actions when issuing a “Notice of Acceptance”, which is the mechanism used to authorize an employer to advertise the for the requested jobs and to start the recruitment of U.S. workers. Effective July 1, 2020, the expanded requirements include:

1. Expand the minimum advertising/recruitment period from the standard 15 days to 30 days before the employer submits a recruitment report to OFLC for review and issuance of a final decision; and
2. Requiring the employer to contact the local MassHire Career Center serving the area of intended employment or worksites, provide the local office with a copy of the job order (listed in MOSES) filed with the MassHire Department of Career Services FLC Unit, and request assistance in recruiting qualified and available U.S. workers.
3. MassHire Career Centers must continue to make referrals to open H2B related job postings. MCCs must document the employment related reason for any rejections of otherwise qualified US workers
4. To assist employers, U.S. DOL will also provide them with the URL to the online directory of Job Service Centers available through DOL’s Career One Stop website at the following link:
<https://www.careeronestop.org/LocalHelp/AmericanJobCenters/find-american-jobcenters.aspx>

Action

Required: Please share this Information Issuance with all appropriate staff and ensure that staff are familiar with the specific referral and documentation requirements of the H-2B program.

References:

- Immigration and Nationality Act (INA), as amended, 8 U.S.C. 1101(a), 1182(a)(5)(A), 1184(c), and 1188
- Wagner-Peyser Act, 29 U.S.C. 49f(d).
- U.S. Citizenship and Immigration Services regulations at 8 Code of Federal Regulations (CFR) Part 214
- 20 CFR Parts 653, subpart F; 654, subpart E; 655, subparts A, B & E; 656; & 658
- ETA H-2A Program Handbook No. 398, January 1988
- TEGL 14-19 Fiscal Year (FY) 2020 Foreign Labor Certification Grant Planning Guidance

Inquiries: Please direct all questions to PolicyQA@MassMail.State.MA.US. Please indicate Issuance number and description.