



DEPARTMENT OF
CAREER SERVICES

Workforce Issuance

100 DCS 21.102.1

☒ 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: February 28, 2022

Subject: **OSCC Roles and Responsibilities Under the H-2B Recruitment Requirements**

Purpose: To notify MassHire Workforce Development Boards (MWDBs), MassHire Career Centers (MCCs) and other local partners of the revised and updated guidance related to providing recruitment assistance to H-2B employers. This updated guidance relates to the recruitment of U.S. workers, completion of the recruitment report and to make MCCs aware that employers seeking to hire H-2B workers under the supplemental H-2B visa cap have been advised that they must contact their local MassHire Career Center in the area of intended employment for assistance in recruiting U.S. workers for their H-2B job opportunities.

Background: The H-2B non-immigrant program allows employers to temporarily hire non-immigrant workers to perform non-agricultural labor or services in the United States. The employment must be of a temporary nature for a limited period such as a one-time occurrence, seasonal need, peak load need or intermittent need. The H-2B Program requires the employer to attest to the Department of Labor (DOL) that it will offer a wage that equals or exceeds the highest of the prevailing wage, applicable Federal minimum wage, the State minimum wage, or local minimum wage to the H-2B non-immigrant worker for the occupation in the area

of intended employment during the entire period of the approved H-2B labor certification. The H-2B program also establishes certain recruitment and displacement standards in order to protect similarly employed U.S. workers.

Policy: In response to the strong demand for H-2B visas, Congress, at times, authorizes a supplemental H-2B visa allocation for additional visas for eligible employers whose employment needs cannot be met under current fiscal year statutory cap. As a result, employers may contact MCCs seeking assistance in recruiting U.S. workers.

H-2B employers must conduct recruitment of U.S. workers within **14 calendar days** from the date the job order is approved by U.S. DOL. Employers must contact, by email or other electronic means, the nearest MCC serving the area of intended employment to request staff assistance to advertise and recruit U.S. workers for the job opportunity.

This includes:

1. MDCS placement of the DOL approved job order in MOSES. The job order will be available in “active” status until 21 days before the anticipated start date of employment.
2. Employer initiated newspaper advertisements in a newspaper of general circulation on two separate days (one must be a Sunday) providing the job details and directing applicants to apply through the local MassHire Career Center.
3. Employers contacting its former employees (except for those who were dismissed for cause but including those who were otherwise laid off).
4. **MassHire Career Center Recruitment Assistance:** Once contacted by the employer, MCC staff should make every effort to broadly disseminate information about the job vacancies to jobseekers, to the MCC partner network, and to any other organizations including labor unions and those organizations serving disadvantaged populations, where potentially qualified U.S. workers may be available for the employer’s job opportunity.

These recruitment efforts may include, for example, disseminating job opportunity information to unemployed workers seeking employment and/or sharing H-2B and other job postings with community-based organizations in the MCC geographic service area.

5. **MassHire Career Centers must** provide to the employer the status information of actual referrals made (sample recruitment report attached).

The employer will generally ask for this report within 14 days from the time that the job order is posted. Employers are required to submit this to the U.S. DOL's Chicago National Processing Center (CNPC) as part of their recruitment obligations*.

6. **MassHire Career Centers must** provide follow-up outcomes on all referrals made (i.e. hired, not hired, etc.)*.
7. Employers are required to document to the Chicago National Processing Center (CNPC) that they:
 - a. Will not reject U.S. applicants for the job opportunity for which the labor certification is sought for reasons other than lawful, job-related reasons.
 - b. Will retain records of all rejections of U.S. worker applicants for the job opportunity for which labor certification is sought.

As local health conditions allow, MCCs may be offering virtual or remote services due to the pandemic. Employers are required to use electronic means to reach out to the MCCs and comply with the contact, disclosure and recruitment requirements.

*MCCs can utilize the FLC Recruitment Report (Crystal Report) found here to provide needed recruitment outcomes to employers:

<https://www.mass.gov/service-details/foreign-labor-certification-flc-reports>

Employers contacting MCCs

When contacting the MCCs, the employers must provide the job order number. If the job order number is unavailable, employers can be directed to refer to the copy of the MDCS H-2B related Job Offer form that will contain information to be able to access the number.

IMPORTANT: Employers have the obligation to accept for consideration all referrals of U.S. workers regardless of the source of referral. It is unlawful for employers to engage in discriminatory recruitment practices.

Complaints

MCC staff that receive complaints from jobseekers against an employer about a specific H-2B job order to which U.S. workers were referred should use the Unified Complaint System to address any reported unlawful recruitment practices.

Each MassHire Workforce Development Board must ensure that all MassHire Career Center staff is informed of the content of this issuance and provide needed assistance to employers seeking verification of referrals made by the local Career Center.

Action

Required: Please ensure appropriate staff are made aware of this communication.

Effective: Immediately

Inquiries: Please email all questions to PolicyQA@detma.org. Also, indicate Issuance number and description.

Attachment: A. OSCC Result of Recruitment Template - REMOVED