



Workforce Issuance

100 DCS 21.105

☒ Policy ☐ Information

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

cc: WIOA State Partners

From: Diane Hurley, Acting Director
MassHire Department of Career Services

Date: November 5, 2024

Subject: **H-2B (Non-Agricultural) Job Orders and Roles and Responsibilities**

Purpose: To notify Local MassHire Workforce Boards, MassHire Career Center Operators and other workforce partners, of the responsibilities and requirements with regards to the filing and posting of H-2B related job orders. This policy replaces:

- Foreign Labor Certification (H2A and H2B) Programs Policy
Issuance: 100 DCS 21.103 Issued: 07/05/2016
- OSCC Roles and Responsibilities Under the H-2B Recruitment Requirements
Issuance: 100 DCS 21.102.1 Issued: 02/28/2022
- H-2B Related Job Order Procedures/Process
Issuance: 100 DCS 21.101 Issued: 10/29/2015
- Processing H-2B, Temporary Non-Agricultural Employment Job Orders
Issuance: 100 DCS 21.100 Issued: 08/14/2015
21-100A: H2B Related Job Order Checklist

Background: The H-2B temporary non-agricultural program allows employers who meet the program requirements to hire nonimmigrant workers to temporarily come to the U.S. to perform non-agricultural services or labor based on the employer's temporary need. The employer must establish that the need for services or labor is temporary in nature, regardless of whether the underlying job is permanent or temporary.

The MassHire Department of Career Services (MDCS) is the designated State Workforce Agency (SWA) and federally funded to support the Foreign Labor Certification Programs, including the review and posting of H-2B job orders, and the referral and follow-up services to job applicants.

Policy: Employers seeking to hire workers under the H-2B Program must show that:

- There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers,
- The employment of H-2B worker(s) will not adversely affect the wages and working conditions of U.S. workers similarly employed,
- There is a place of business (physical location) in the U.S. and a means by which it may be contacted for employment,
- There is/will be an employer relationship (such as the ability to hire, pay, fire, supervise, or otherwise control the work of employees) with respect to an H-2B worker or a worker in corresponding employment,
- They have, for purposes of filing an Application for Temporary Employment Certification, a valid Federal Employer Identification Number (FEIN), and
- The temporary need for workers qualifies as one of the following:
 - One-time occurrence
 - Seasonal need
 - Peak load need or
 - Intermittent need

EMPLOYER ROLE AND RESPONSIBILITIES

Prior to filing a petition for non-immigrant workers with the Department of Homeland Security (DHS), [U.S. Citizenship and Immigration Services](#) (USCIS), an employer must obtain an approved temporary labor certification from the United States Department of Labor (USDOL).

The Office of Foreign Labor Certification (OFLC) encourages employers to submit applications and supporting documentation electronically via the Foreign Labor Application Gateway ([FLAG System](#)) as that is the most secure, efficient filing method (rather than US mail).

Employers must:

1. **Obtain a Prevailing Wage Determination (PWD)*:**
 - At least **60 calendar days** prior to filing an H2B job order
 - Request a PWD from the National Prevailing Wage Center (NPWC) by filing an [Application for Prevailing Wage Determination Form ETA-9141](#) utilizing USDOL's [FLAG System](#).

Employers that lack adequate access to electronic filing may file the Application for a PWD by mail. Any mandatory field left blank, or incomplete will result in the inability to submit the application and the application will be returned to the requestor if mailed.

Applications can be mailed to:

U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
National Prevailing Wage Center
200 Constitution Ave NW
Room N-5311
Washington, DC 20210

2. File a H-2B job order:

- within **75 to 90 days** prior to needing workers (Date of Need-DON) (start date of employment), with the OFLC Chicago National Processing Center (CNPC) utilizing the [H-2B Application for Temporary Employment Certification Form ETA-9142B](#) (H-2B Application)

and concurrently,

- with MDCS via [MassHire JobQuest](#)

All required Appendices with supporting documents, including a copy of the job order filed with MDCS must be submitted.

* Please refer to the Application for PWD for detailed instructions for how to complete the form: [ETA-9141](#)

Employers will be required to document to the USDOL 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.

Employers must conduct recruitment of U.S. workers to ensure that there are not qualified U.S. workers who will be available for the positions listed in the *Application for Temporary Employment Certification*. U.S. Applicants can be rejected only for lawful job-related reasons.

MASSHIRE SYSTEM ROLE AND RESPONSIBILITIES

MDCS FOREIGN LABOR CERTIFICATION (FLC) UNIT

The MDCS FLC Unit is responsible for reviewing and processing all H-2B related job orders and notifying the CNPC of findings. Any deficiencies noted by MDCS during the review process must be reported to the CNPC by the FLC Unit within **6 business days** of having received the clearance/job order.

When deficiencies are noted and reported to the CNPC, the CNPC will issue a Notice of Deficiency (NOD) and email it to the employer, agent (if applicable), and MDCS.

If there are no deficiencies or if the identified deficiencies were remedied to the satisfaction of the CNPC certifying officer, the CNPC will issue a Notice of Acceptance (NOA) and send it via email to the employer/agent and a copy to the MDCS FLC Unit.

MDCS will release the final job order for posting onto MassHire JobQuest and provide notification to the local operations manager or designated staff.

MASSHIRE CAREER CENTER (MCC) ROLE

Employers seeking to file a job order in connection with a future H-2B related application must be directed to [MassHire JobQuest](#) to file their job order. The workflow will ask the employer if the job order is associated with a future H-2B application. Upon submittal, the job order will go into “a queue” for review and final posting by MDCS FLC Unit.

Local MassHire Career staff, upon receiving notice of a job order must make every effort to broadly disseminate information about the job vacancy(s) to jobseekers, MCC partner networks, and to any other organizations including labor unions and those organizations serving disadvantaged populations, where potentially qualified U.S. workers may be available to fulfill the job opportunity.

Recruitment efforts may include:

- Disseminating job opportunity information to unemployed workers seeking employment
- Sharing H-2B and other job postings with community-based organizations in the MCC geographic service area.

The job order will stay in “active” status (open for referrals) until 21 days before the anticipated start date of employment.

MassHire Career Center staff must make referrals for employment for those individuals who have been apprised of all the details of employment within the job posting and who are qualified and available for employment.

Career Center staff must document referral activity in MOSES timely, enter appropriate job seeker services and notes and post outcomes for all referrals made (i.e. hired, not hired, etc.).

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

MCCs can utilize the FLC Recruitment Report (Crystal Report) found here to provide needed recruitment outcomes to employers: [Foreign Labor Certification \(FLC\) reports | Mass.gov](#) (must be opened in AWS).

IMPORTANT: Employers participating in the H-2B program must hire any eligible U.S. workers who apply for the job unless they have a valid, employment-related reason for not doing so. According to the U.S. Department of Labor, these reasons must be lawful and related to the job requirements.

If MassHire Career Center staff become aware that an H-2B related job order has been posted without being marked as H2B related, the job order must be placed in a "closed" status and the MDCS FLC Unit notified immediately via email at H2BPrograms@mass.gov (please include the Job Order Number in the subject line). The MDCS FLC Unit will take appropriate action.

LANGUAGE ACCESS

Career Center staff may, as needed, utilize the MassHire Department of Career Services Multilingual Services for assisting customers. Refer to:

Issuance: 100 DCS 08.101.2 Issued: 9/24/2020

[Language Services Guidelines to Assist Limited English Proficiency Customers](#)

COMPLAINTS

MCC staff that receive a complaint from a jobseeker against an employer about a specific H-2B job order must use the Unified Complaint System to address any reported unlawful recruitment practices. Refer to:

Issuance: 100 DCS 03.101.3 Issued: 08/22/2024

[Unified Workforce Development Complaint System and Appeals Process Revised](#)

Action:

Required: Please ensure that all appropriate individuals in your workforce development area are notified of this policy and take necessary action to ensure compliance with its content.

Effective: Immediately

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