

# Mass Workforce Issuance

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**100 DCS 21.103**

☒ **Policy**

☐ **Information**

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**To:** Chief Elected Officials  
Workforce Board Chairs  
Workforce Board Directors  
Title I Administrators  
Career Center Directors  
Title I Fiscal Officers  
DCS Operations Managers

**cc:** WIOA State Partners

**From:** Alice Sweeney, Director  
Department of Career Services

**Date:** July 5, 2016

**Subject:** **Foreign Labor Certification (H2A and H2B) Programs Policy**

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**Purpose:** To notify Local Workforce Boards, One-Stop Career Center Operators and other local workforce partners of information and policy guidance regarding the operation and support of the Foreign Labor Certification (H-2A and H-2B) non-Immigrant Visa Programs.

**Background:** The H-2A temporary agricultural program allows U.S. agricultural employers who anticipate a shortage of domestic workers to bring non-immigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.

The H-2B temporary non-agricultural program allows U.S. employers who meet specific regulatory requirements to bring foreign non-immigrant workers to the United States to fill temporary non-agricultural jobs. Before requesting H-2B classification from the U.S. Citizenship and Immigration Services (USCIS), the employer must apply for and receive a temporary labor certification for H-2B workers from the U.S. Department of Labor (DOL).

The Department of Career Services (DCS), is federally funded to support the Foreign Labor Certification Programs; including the review and posting of H-2A or H-2B related job orders, inspection of employer-provided housing facilities, the administration of prevailing wage and prevailing practices surveys and the referral and follow-up services to job applicants.

The main objectives of the FLC programs are:

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.  
TDD/TTY 1-800-439-2370 - Voice 1-800-439-0183

- To enable agricultural and other employers to obtain foreign workers for temporary or seasonal jobs when domestic (U.S.) workers are not available; to assure adequate working and living conditions for domestic and foreign workers employed in corresponding employment and to provide greater protection for U.S. and foreign workers alike.
- To assist applicants in securing employment and workforce information, through the network of One-Stop Career Centers, by providing a variety of services to both job seekers and employers free of charge. The One-Stop Career Centers must offer training referrals, career counseling, supportive services, job listings, and similar employment-related services to applicants, as appropriate. Employers are provided; labor market information, recruitment services (including the posting of job orders and the referral of qualified applicants). Customers can visit the One-Stop Career Centers in person or connect to the center's information online.

### **Requirements:**

The Department of Career Services (DCS), Foreign Labor Certification Unit (FLC) provides support and guidance to local One-Stop Career Centers (OSCCs) to assure consistency in the statewide operation of the H-2A / B labor certification programs. The FLC unit is the first point of contact for employers wishing to file a labor certification request.

Employers or their agents must submit their applications to the FLC unit web portal: <http://www.mass.gov/dcs/flc> or via email at: [H2Aprogram@MassMail.State.MA.US](mailto:H2Aprogram@MassMail.State.MA.US) or [H2BPrograms@MassMail.State.MA.US](mailto:H2BPrograms@MassMail.State.MA.US).

The H-2A (ETA 790 form) request must be received no more than 75 calendar days and no fewer than 60 calendar days before the anticipated date of need. The H-2B (H-2B Related Job Order Form) request must be received no more than 90 calendar days and no fewer than 75 calendar days before the anticipated start date (date of need). In both instances, employers must state that the job offer filed is related to a future H-2A / B labor certification request. This is done via the FLC unit web portal as described above. One Stop CC staff must refer employers to this portal upon inquiry or as appropriate.

The FLC unit reviews the job offers and attachments to ensure compliance with applicable regulations within the prescribed time frames and communicates to the employer, if H-2A, any deficiencies or to the Chicago National Processing Center (CNPC), if H-2B. Once deficiencies are corrected, the FLC unit will assign a job order number and post the job order as per DOL instructions.

One-Stop Career Centers (OSCCS) are responsible for servicing the job orders posted by the DCS, FLC Unit. This includes:

- the referral of applicants,
- follow-up services to applicants and employers, and
- assisting employers in completing the results of recruitment reports(See **Issuance: 100 DCS 21.102 Issued: 03/22/2016** <http://www.mass.gov/massworkforce/docs/issuances/wioa-policy/21-102.pdf> ).

Lastly, OSCC staff must record all transactions in MOSES (i.e. Hired/Not Hired including the employment related reason for all rejected applicants).

In order to comply with H-2A and B regulatory requirements, all job orders classified as H-2A or H-2B are classified as “staff-assisted” and potential applicants must be disclosed the full terms and conditions of employment in writing. This can be accomplished by providing a printed copy of the job order listed in MOSES. Whenever possible, or if requested, OSCC staff shall provide Limited English Proficient (LEP) applicants the job order information in their native language. If assistance is needed please refer to Workforce Issuance 100 DCS 08.101, issued: 11/24/2015, Language Services Assistance for Limited English Proficiency Customers.

Additionally, OSCCs are responsible for informing the FLC Unit of any questionable refusals to hire U.S. workers so that the information can be transmitted to the U.S. DOL, Chicago National Processing Center. Refusal to hire qualified applicants could affect the final determination or lead to revocation of the requested labor certification. Employers must provide a valid employment related reason for any rejection of otherwise qualified U.S. workers and OSCCs must document in MOSES such rejections. Applicants that request a referral to a job after the start date listed on the job order can be referred until the end date listed on the job order. Again, results of those referrals must be documented in MOSES and any rejections reported to the FLC Unit as described above.

**Action**

**Required:** Each local Workforce Development Board will ensure that Career Center staff is informed of the content of this issuance and ensure that customers receive all the services, benefits and protections afforded to them under WIOA and the Foreign Labor Certification Programs’ requirements.

**Effective:** Immediately

**Inquiries:** Please email all questions to [PolicyQA@MassMail.State.MA.US](mailto:PolicyQA@MassMail.State.MA.US)