

**SOP 23-05 Change 1**  
**Migrant and Seasonal Farmworkers Requirements and Service**  
**Provision**  
**Workforce Innovation and Opportunity Act (WIOA)**  
**Standard Operating Procedures**  
**Grow Southwest Indiana Region 11**  
**Approval Date: 8/25/2023**

**Purpose**

This policy provides guidance regarding the mandated requirements for the Monitor Advocate System (MAS) and provision of services to Migrant and Seasonal Farmworkers (MSFWs).

**Change 1 Summary**

Attachment A – MSFW Desk Reference has been modified for printing purposes and is now a separate file on the DWD Active Policies webpage.

**Rescission**

DWD Policy 2022-19 *Migrant and Seasonal Farmworkers Requirements and Service Provisions under the Monitor Advocate System, Wagner-Peyser Act, and Title III of the Workforce Innovation and Opportunity Act* will be implemented as SOP 23-05 Change 1 Migrant and Seasonal Farmworkers Requirement and Service Provision.

**References**

- WIOA Sec. 188
- 20 CFR 653 Subpart B
- 29 CFR 38-69
- 29 CFR 500.20
- NAACP, Western Region v. Brennan, 360 F. Supp. 1006(D.D.D. 1973). Judge Richey Court Order)
- US Department of Labor (USDOL) Employment and Training Administration (ETA) Form 8429, *Complaint/Apparent Violation Form*
- Indiana Department of Workforce Development (DWD) State Form, 56724 *WAGNER PEYSER (WP) COMPLAINT AND APPARENT VIOLATION LOG*
- DWD TA 2022-20 *Procedures and Required Forms for WorkOne Centers Pertaining to the Employment Service and Employment-Related Law Complaint System*
- DWD TA 2002-21 *Step-by-Step Process for Intrastate Clearance Orders*

## **Definitions**

### **Farm Work**

The cultivation and tillage of the soil, dairying, and 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 in conjunction with farming operations; this includes preparing agriculture commodities for market.

### **Seasonal farmworker**

- Jobseeker worked for at least one (1) day doing farm work during the last 12 months
- The agricultural employment was of a temporary or seasonal basis, and
- Jobseeker did not have to move from their permanent residence to do this farm work.

### **Migrant farmworker**

- Is a seasonal farmworker
- Traveled to perform the farm work, and
- Jobseeker was not able to return to their permanent resident within the same day.

## **Content**

USDOL created the Monitor Advocate System (MAS) to carry out the requirements of the Judge Richey Court Order which ensure that MSFWs receive services both qualitatively and quantitatively equivalent to the services provided to all other jobseekers. The Wagner-Peyser Act is utilized to implement the intent of the Judge Richey Court Order.

- The region is committed to meeting the letter and spirit of the Judge Richey Court Order through compliance with Wagner-Peyser requirements that govern the provision of MSFW services.
- MSFWs will be identified and informed of all available services including Wagner-Peyser and WIOA services including employment and training services.

## **Local Area MSFW Service Provision Requirements**

Each WorkOne/American Job Center will offer the full range of career/employment, training, and supportive services that are provided to non-MSFWs and will be sensitive to preferences, needs, and skills of individuals MSFWs.

Staff will:

- utilize the farmworker information questions within DWD's case management system to determine whether a jobseeker is a MSFW when the individual initially enrolls at the WorkOne and anytime they return to receive additional services
- ensure that MSFW participants who are English Language Learners (ELLs) receive free translation services as appropriate
- offer the full range of WorkOne available career services, training services, and supportive services and
- refer to additional program services that include but are not limited to Wagner-Peyser, Adult Education, the National Farmworker Job Program (NFJP), and all other appropriate programs and services.

Since MSFW status is subject to change over time, once a MSFW exits the Wagner-Peyser program and other partner programs in which they had been co-enrolled, and subsequently returns to the local office for services, the above required activities will be repeated, including a review and update of the farmworker information questions.

### **Monitor Advocate System (MAS)**

- MAS is a federal/state monitoring system to ensure equitable access to career services, skills development, and workforce protection offered by WorkOne to improve their living and working conditions.
- Monitor Advocates conduct ongoing monitoring at local, state, regional, and national levels of services that are provided to MSFWs on a basis that is qualitatively and quantitatively equivalent or proportionate to all other job seekers. The State Monitor Advocate (SMA) provides ongoing review of the delivery of services and protections for MSFWs at all WorkOne locations.
- The MAS comprises four major components:
  1. Monitoring
  2. An Employment Service and Employment Related Law Complaint System
  3. Outreach, and
  4. The Agricultural Recruitment System (ARS).

### **Monitoring**

- The SMA will conduct an ongoing review of service delivery and protections afforded by Employment Service regulations to MSFWs by DWD and the WorkOne offices.
- The SMA, without delay, must advise DWD and local office of problems, deficiencies, or improper practices in the delivery of services and protections of MSFWs.
- The SMA may request a corrective action plan to address deficiencies.
- The SMA may also advise DWD and local areas on means to improve the delivery of services.

## Employment Service and Employment Related Law Complaint System

- Regulations require the establishment and maintenance of an Employment Service and Employment Related Law Complaint System to process employment related law complaints made by individuals, employers, organizations, associations, or other entities.
- A **complaint** is a representation made or referred to a State or Employment Service office of an alleged violation of the Employment Service regulations and/or other federal laws enforced by USDOL's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), or other federal, stated, or local agencies enforcing employment related law.
- An **apparent violation** takes place when a WorkOne staff person observes, has reason to believe, or receives information regarding a suspected employer violation of employment related laws of regulations.
- The complaint system handles complaints regarding failure of an employer to comply with Employer Service regulations and complaints against an employer about the specific job to which the applicant was referred. This system was established to create a safe place where farmworkers could report a complaint against an employer or farm laborer contractor without fear of retaliation.
- WorkOne staff in the region will be knowledgeable of the complaint system in their offices and internal protocol to refer or investigate regulations and complaints.
  - Any WorkOne personnel can take a complaint. For violations against MSFW programs or activities including MSFW staff or WIOA staff, the complaint will be referred to the local area Equal Opportunity Officer to follow the local EEO policy and procedures.
  - It is best practice that if a MSFW is hesitant to file a complaint, the WorkOne staff person should treat it as an apparent violation and report it while keeping the jobseeker's name anonymous.
  - Each WorkOne maintains and completes the MSFW Complaint and Apparent Violation Lob and the Complaint/Apparent Violation Form. Each month, the logs are compiled by the Performance Monitoring Specialist and sent to the SMA.

## Outreach

- Designed to contact MSFWs who are not being reached by normal intake activities conducted by the local offices, the outreach program employs DWD staff who work in conjunction with the National Farmworker Jobs Program (NFJP) grantees and other MSFW partners.
- Outreach Staff communicate with MSFWs individually or in groups about the services available at the local one-stop centers, information on the complaint system, and an overview of their farmworkers rights.
- Outreach Staff can provide one-site assistance with the Wagner-Peyser application for services and other Wagner-Peyser activities when an MSFW cannot or wishes not to visit the local WorkOne.

## **Agricultural Recruitment System (ARS)**

The Wagner-Peyser Act requires the Employment Service to maintain a process for the orderly movement of workers within and between states.

- The ARS helps agricultural employers recruit qualified workers on a temporary or seasonal basis.
- The ARS provides protection to the workers who are not seeking permanent relocation, but rather temporary agricultural employment.
- Through the ARS, DWD can systemically recruit and refer qualified workers from within a state and from other states when there is an anticipated shortage of workers.
- When an agricultural employer determines a need for seasonal or temporary workers, WorkOne staff can assist the employer with recruitment efforts by:
  - Entering the job order into DWD's labor exchange system
  - Conducting additional recruitment activities such as a virtual or in-person job fairs
  - Staff referrals
- If it is determined through the agricultural employer's local recruitment efforts that there is an insufficient pool of local workers to meet the employer's needs and/or the office expects a shortage of local workers, WorkOne should advise the employer of the option to open the job order to other WorkOne offices within the state, known as an Intrastate Clearance Order. Local staff will inform the SMA of the need to expand the job order statewide.
- If labor needs are not met statewide, with the employer's authorization, the SMA will request and submit an Interstate Clearance Order to the USDOL/ETA Regional Office for approval. Once approved, the Regional Office will advise which supply states the Interstate Clearance Order will apply, and supplying states will recruit qualified workers.
- All clearance orders must be posted in accordance with applicable ETA guidance. If the job order for the Employment Service office incorporates offices beyond the local office commuting area, the Employment Service office must suppress the employer information in DWD's labor exchange system in order to facilitate the orderly movement of workers within the Employment Service system.

## **MSFW Equity Indicators**

- Accountability for the MSFW program is tracked by meeting the equity indicators and minimum service level indicators. Only significant MSFW state workforce agencies are required to meet minimum levels of service to NSFWs. Per federal regulations, Indiana is not a significant MSFW state workforce agency.
- Equity indicators address employment services and at a minimum should include MSFWs who are:
  - Referred to jobs OR
  - Receiving job development OR
  - Referred to supportive and/or career services.
- To meet 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.

## **Action**

DWD Policy 2022-19: Migrant and Seasonal Farmworkers Requirements and Service Provision under the Monitor Advocate System. Wagner-Peyser Act, and Title III of the Workforce Innovation and Opportunity Act will be implemented in Region 11 as SOP 23-05 Migrant and Seasonal Farmworkers Requirements and Service Provision.

WorkOne staff will be trained annually on the MAS and appropriate data entry for accurate federal reporting to make certain that MSFWs are identified, engaged, and equitably served by all local staff.

Contents of this SOP will be subject to routine DWD monitoring.

## **Attachments**

**Attachment A** – MSFW Desk Reference

### **Effective Date**

Immediately

### **Ending Date**

Upon rescission

## **Attachment A**

### **MSFW Desk Reference**

The MSFW Desk Reference provides WorkOne staff a resource that includes standard operating procedures, farmworker definitions, and examples of different types of farmwork to assist in the identification of and appropriate service delivery to MFSWs.

The printable MSFW Desk Reference is a separate document that can now be accessed on the DWD Active Policies webpage, <https://www.in.gov/dwd/compliance-policy/policy/active> .