



Montana Department of LABOR & INDUSTRY

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2 **Division: Workforce Services Division**
3 **Category: Wagner-Peyser**
4 **Original Effective Date: 11/20/2017**
5 **Last Revised: October 1, 2021**
6 **Policy No.: 06-17**

7 Discontinuation of Services Policy

8 **Background:** Circumstances at Job Service Montana offices may require discontinuation or termination of
9 services to a job seeker or business.

10 **Scope:** This policy applies to all Job Service Montana staff and other Montana Department of Labor &
11 Industry (MDLI) Workforce Services Division (WSD) staff; and montanaworks.gov users. This policy is effective
12 October 1, 2021

13 Policy:

14 Job Seekers:

- 15 • Job Service Montana has a Job Service Acceptable Use Policy that identifies the general scope of
16 authorized and acceptable resource use. Reviewed and approved by MDLI's Office of Legal Services,
17 the Job Service Acceptable Use Policy states: "Job Service exists to assist the public in seeking and
18 obtaining employment (MCA 39-51-307). Job Service resources, including computers and landline
19 telephones, are made available to the public to use for job search-related activities, unemployment
20 insurance, career planning, and other related purposes. This policy to be interpreted and enforced by
21 Job Service Montana staff. Enforcement includes periodic monitoring of computer and phone use by
22 individuals." Customers should be expected to follow acceptable use activities outlined in policy. If a
23 customer is using resources for inappropriate or unauthorized activities, Job Service staff are authorized
24 to inform the customer that their activities fall outside of the guidelines for appropriate and authorized
25 use of Job Service resources and to request that the customer refrain from such activities. In the case
26 of disruptive, threatening, or illegal activities, calling law enforcement is appropriate. Any action should
27 be undertaken in consultation with the Job Service Montana supervisor whenever possible. Additionally,
28 all such actions should be formally documented.
 - 29 ○ No further discontinuation of service for a job seeker beyond the terms of the Job Service
30 Acceptable Use Policy is authorized.

31 Businesses:

- 32 • MDLI's Workforce Services Division staff, including Job Service Montana central and local office staff,
33 are not expected to review job orders on a regular basis. The following guidance will be used when
34 issues, complaints, and apparent violations arise. When informal resolution fails, a determination of the
35 need to discontinue services to a business may occur under the following circumstances:
 - 36 ○ The business refuses to alter or withdraw job posting containing specifications that are contrary
37 to employment-related laws;
 - 38 ○ The business refuses to provide assurances that the jobs offered comply with employment-
39 related laws;

- 40 ○ The business is found by an appropriate enforcement agency's final determination to have
41 violated any employment-related laws and notification of the final determination has been
42 provided to MDLI by that enforcement agency.
- 43 ○ Foreign Labor businesses:
 - 44 ▪ The business is found, through random, unannounced field checks to agricultural
45 worksites conducted by the Monitor Advocate to have either misrepresented the terms or
46 conditions of employment specified on agricultural intra/interstate job postings or failed
47 to comply with assurances made on job postings;
 - 48 ▪ The business is found by MDLI (WSD) to have violated Employment Service (ES)
49 regulations 20 CFR 658.411;
 - 50 ▪ The business refuses to accept qualified workers referred through the interstate
51 clearance system;
 - 52 ▪ The business refuses to cooperate in agricultural worksite visits (Field Checks) conducted
53 pursuant to 20 CFR 653.503; or
 - 54 ▪ If it comes to the attention of the Foreign Labor Certification Officer that a business
55 participating may not have complied with the terms of its temporary labor certification;
56 i.e. the H-2A and H-2B visa programs.
- 57 ● MDLI's Office of Legal Services will notify the business in writing that it intends to discontinue the
58 provision of employment services and the reason, therefore.
 - 59 ○ Where the decision is based on submittal and refusal to alter or to withdraw job orders
60 containing specifications contrary to employment-related laws, MDLI will specify the date the
61 order was submitted, the MontanaWorks JO# of the job order involved, the specifications of the
62 job order that are contrary to employment-related laws and the laws involved. MDLI will notify
63 the business in writing that all employment services will be terminated in 20 working days
64 unless the business within that time:
 - 65 ▪ Provides adequate evidence that the specifications are not contrary to employment-
66 related law; or
 - 67 ▪ Withdraws the specifications and resubmits the job order in compliance with all
68 employment-related laws; or
 - 69 ▪ If the job is no longer available, makes assurances that all future job orders submitted
70 will comply with all employment-related laws; or
 - 71 ▪ Requests a hearing from MDLI pursuant to 20 CFR 658.417.
 - 72 ○ Where the decision is based on submittal of an order and refusal to provide assurances that the
73 job complies with employment-related laws or to withdraw the order, MDLI will specify the date
74 the order was submitted, the order involved, and the assurance involved. The business must be
75 notified that all employment services will be terminated in 20 working days unless the business
76 within that time:
 - 77 ▪ Resubmits the order with the appropriate assurances; or
 - 78 ▪ If the job is no longer available, makes assurances that all future job orders submitted
79 will comply with all employment-related laws; or
 - 80 ▪ Requests a hearing from MDLI pursuant to 20 CFR 658.417.
 - 81 ○ Where the decision is based on a finding that the business has misrepresented the terms or
82 conditions of employment specified on job orders or failed to comply fully with assurances made
83 on job orders, MDLI will specify the basis for the determination. The business will be notified
84 that all employment services will be terminated in 20 working days unless the business within
85 that time:
 - 86 ▪ Provides adequate evidence that terms and conditions of employment were not
87 misrepresented; or
 - 88 ▪ Provides adequate evidence that there was full compliance with the assurances made
89 on the job order; or

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- Provides resolution of a complaint which is satisfactory to a complainant referred by the One-stop or Job Service Montana office; and
 - Provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances; or
 - Requests a hearing from MDLI pursuant to 20 CFR 658.417.
 - Where the decision is based on a final determination by an enforcement agency, MDLI will specify the enforcement agency's findings of facts and conclusions of law. The business must be notified that all employment services will be terminated in 20 working days unless the business within that time:
 - Provides adequate evidence that the enforcement agency has reversed its ruling and that the business did not violate employment-related laws; or
 - Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made; and
 - Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.
 - Where the decision is based on a finding of a violation of 20 CFR 658.411, MDLI will specify the finding. The business must be notified that all employment services will be terminated in 20 working days unless the business within that time:
 - Provides adequate evidence that the business did not violate 20 CFR 658.411; or
 - Provides adequate evidence that appropriate restitution has been made or remedial action taken; and
 - Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future; or
 - Requests a hearing from MDLI pursuant to 20 CFR 658.417.
 - Where the decision is based on a business's failure to accept qualified workers referred through the clearance system, MDLI will specify the workers referred and not accepted. The business must be notified that all employment services will be terminated in 20 working days unless the business within that time:
 - Provides adequate evidence that the workers were accepted; or
 - Provides adequate evidence that the workers were not available to accept the job; or
 - Provides adequate evidence that the workers were not qualified; and
 - Provides adequate assurances that qualified workers referred in the future will be accepted; or
 - Requests a hearing from MDLI pursuant to 20 CFR 658.417.
 - Where the decision is based on lack of cooperation in the conduct of field checks, MDLI will specify the lack of cooperation. The business must be notified that all employment services will be terminated in 20 working days unless the business within that time:
 - Provides adequate evidence that he/she did cooperate; or
 - Cooperates immediately in the conduct of field checks; and
 - Provides assurances that he/she will cooperate in future field checks in further activity; or
 - Requests a hearing from MDLI pursuant to 20 CFR 658.417.
 - If the business chooses to respond pursuant to this section by providing documentary evidence or assurances, he/she must at the same time request a hearing if such hearing is desired in the event that MDLI does not accept the documentary evidence or assurances as adequate.
 - Where the decision is based on repeated initiation of procedures for discontinuation of services, the business must be notified that services have been terminated.

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- If the business makes a timely request for a hearing, in accordance with this section, MDLI will follow procedures set forth at 20 CFR 658.411 and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to 20 CFR 658.411.
 - If the business does not provide a satisfactory response in accordance with 20 CFR 658.502 within 20 working days, or has not requested a hearing, MDLI will immediately terminate services to the business.
 - If services are discontinued to a business subject to Federal Contractor Job Listing Requirements, MDLI will notify the Employment Training Administration (ETA) regional office immediately.
 - Services may be reinstated to a business after discontinuation under 20 CFR 658.503(a) and (b), if:
 - The State is ordered to do so by a Federal ALJ Judge or Regional Administrator; or
 - The business provides adequate evidence that any policies, procedures or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar circumstances are not likely to occur in the future; and
 - The business provides adequate evidence that he/she has responded adequately to any findings of an enforcement agency, MDLI, or ETA, including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.
 - MDLI will notify the business requesting reinstatement within 20 working days whether his/her request has been granted. If MDLI denies the request for reinstatement, the basis for the denial will be specified and the business must be notified that he/she may request a hearing within 20 working days.
 - If the business makes a timely request for a hearing, MDLI will follow the procedures set forth at 20 CFR 658.417.
 - MDLI will reinstate services to a business if ordered to do so by a State hearing official, Regional Administrator, or Federal ALJ after a hearing.

162 **Administrative Requirements:**

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- The manager of an office initiating the discontinuation of services must notify the Job Service Operations Bureau Chief prior to contacting the MDLI's Office of Legal Services to proceed with the required steps necessary for discontinuation.

166 **References:**

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- [MCA 39-51-307. Department to Create Employment Service](#)
 - [29 U.S.C. 49 - United States Employment Service Established](#)
 - [20 CFR 658.411 Action on Complaints](#)
 - [20 CFR 658.502 Notification to Employers](#)
 - [20 CFR 658.503 Discontinuation of Services](#)
 - [20 CFR 653.503 Field Checks](#)
 - [20 CFR 658.417 State Hearing](#)