



# Montana Department of LABOR & INDUSTRY

1  
2 Division: Workforce Services Division  
3 Category: Wagner-Peyser  
4 Effective Date: 11/20/2017  
5 Last Revised: N/A  
6 Policy No.: 06-17

## 7 Discontinuation of Services Policy

8 **Background:** On occasion circumstances may present themselves in a one-stop location that require  
9 services typically provided by the one-stop to either a job seeker or a business to be terminated or discontinued.

10 **Scope:** This policy applies to all Job Service staff and other WSD staff providing services to job seekers  
11 and businesses, Job Service office managers and supervisors, and jobs.mt.gov users. This policy is effective  
12 06/21/2017.

### 13 Policy:

#### 14 Job Seekers:

- 15 • Wagner-Peyser nor WIOA allow for discontinuation of services to a job seeker. Furthermore, MCA 39-51-  
16 307 provides that DLI shall establish and maintain free public employment offices to comply with 29  
17 USC 49. Neither the MCA nor the USC state an allowance for discontinuation of the free public service.
- 18 • The WIOA programs have client agreements that are signed in the IEP and ISS. The IEP states, “It has  
19 been explained to me and I agree that the ultimate goal or my participation is my placement in  
20 unsubsidized employment, leading to self-sufficiency. I understand my responsibility to work toward this  
21 goal. My failure to meet the conditions of this agreement can result in termination from the program”.  
22 The ISS states, “It has been explained to me, and I agree, that the ultimate goal of my participation is  
23 complete secondary school and obtain my diploma or equivalent; and enrollment in post-secondary  
24 education placement; or placement in unsubsidized employment, leading to my self-sufficiency. I  
25 understand it is my responsibility to work toward the ultimate goal. I understand that failure to  
26 participate or meet the conditions of this agreement could result in termination from the program”.
  - 27 ○ This agreement allows a WIOA program provider to terminate the client’s participation in a WIOA  
28 funded program. This does not allow DLI to terminate Wagner-Peyser services to the individual.
- 29 • Job Service currently has an “Acceptable Use Policy” the DLI Legal has reviewed and approved that  
30 states “[The] job service exists to assist the public in seeking and obtaining employment. Job Service  
31 resources, including computers, are provided to the public for the limited purpose of job searches. All  
32 other use is unauthorized”. This policy is to be interpreted and enforced by job service employees.  
33 Enforcement includes periodic monitoring of computer use. In general, for a first infraction, customers  
34 should be asked to resume job search tasks. For a second infraction in the same day, customers may  
35 be asked to leave the job service for the remainder of the day. Please note that asking a customer to  
36 leave the job service is a serious measure, and should be undertaken only in consultation with the job  
37 service supervisor. Additionally, all such actions should be formally documented.”
  - 38 ○ No further discontinuation of service for a job seeker beyond the terms of the “Acceptable Use  
39 Policy” is authorized.

## 1 Businesses:

- 2 • The following guidance shall not in any way be interpreted that Workforce Consultants or one-stop  
3 centers are expected to review job orders on a regular basis. The following guidance shall be used when  
4 a one-stop center has issues, complaints and apparent violation arise. It is not the intent that one-stop  
5 centers actively engage in pursuing discontinuation of services to businesses unless informal resolution  
6 has failed.
- 7 • One-stop centers may discontinue services to a business in the following circumstances:
  - 8 ○ The business refuses to alter or withdraw job posting containing specification that are contrary  
9 to employment-related laws;
  - 10 ○ The business refuses to provide assurances that the jobs offered are in compliance with  
11 employment-related laws;
  - 12 ○ The business is found, through random, unannounced field checks to agricultural worksites  
13 conducted by the Monitor Advocate to have either misrepresented the terms or conditions of  
14 employment specified on agricultural intra/interstate job postings or failed to comply with  
15 assurances made on job postings;
  - 16 ○ The business is found by a final determination by an appropriate enforcement agency to have  
17 violated any employment-related laws, and notification of the final determination has been  
18 provided to DLI by that enforcement agency;
  - 19 ○ The business is found by WSD to have violated ES regulations 20 CFR 658.411;
  - 20 ○ The business refuses to accept qualified workers referred through the interstate clearance  
21 system;
  - 22 ○ The business refuses to cooperate in agricultural worksite visits (Field Checks) conducted  
23 pursuant to 20 CFR 653.503; or
  - 24 ○ If it comes to the attention of the Foreign Labor Certification Officer that a business participating  
25 may not have complied with the terms of its temporary labor certification, under, for example  
26 the H-2A and H-2B visa programs.
- 27 • Upon determination of the need to discontinue services to a business, DLI Legal Services will notify the  
28 business in writing that it intends to discontinue the provision of employment services and the reason  
29 therefore.
  - 30 ○ Where the decision is based on submittal and refusal to alter or to withdraw job orders  
31 containing specifications contrary to employment-related laws, DLI will specify the date the order  
32 was submitted, the job order involved, the specifications contrary to employment-related laws  
33 and the laws involved. DLI will notify the business in writing that all employment services will be  
34 terminated in 20 working days unless the business within that time:
    - 35 ▪ Provides adequate evidence that the specifications are not contrary to employment-  
36 related law; or
    - 37 ▪ Withdraws the specifications and resubmits the job order in compliance with all  
38 employment-related laws; or
    - 39 ▪ If the job is no longer available, makes assurances that all future job orders submitted  
40 will be in compliance with all employment-related laws; or
    - 41 ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.
  - 42 ○ Where the decision is based on submittal of an order and refusal to provide assurances that the  
43 job complies with employment-related laws or to withdraw the order, DLI will specify the date the  
44 order was submitted, the order involved, and the assurance involved. The business must be  
45 notified that all employment services will be terminated with 20 working days unless the  
46 business within that time:
    - 47 ▪ Resubmits the order with the appropriate assurances; or
    - 48 ▪ If the job is no longer available, makes assurances that all future job orders submitted  
49 will be in compliance with all employment-related laws; or
    - 50 ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.

- 1           ○ Where the decision is based on a finding that the business has misrepresented the terms or  
2 conditions of employment specified on job orders or failed to comply fully with assurances made  
3 on job orders, DLI will specify the basis for the determination. The business will be notified that  
4 all employment services will be terminated in 20 working days unless the business within that  
5 time:  
6           ▪ Provides adequate evidence that terms and conditions of employment were not  
7 misrepresented; or  
8           ▪ Provides adequate evidence that there was full compliance with the assurances made  
9 on the job order; or  
10          ▪ Provides resolution of a complaint which is satisfactory to a complainant referred by the  
11 one-stop; and  
12          ▪ Provides adequate assurance that specifications on future orders will accurately  
13 represent the terms and conditions of employment and that there will be full compliance  
14 with all job order assurances; or  
15          ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.
- 16           ○ Where the decision is based on a final determination by an enforcement agency, DLI will specify  
17 the enforcement agency's findings of facts and conclusions of law. The business must be  
18 notified that all employment services will be terminated in 20 working days unless the business  
19 within that time:  
20           ▪ Provides adequate evidence that the enforcement agency has reversed its ruling and  
21 that the business did not violate employment-related laws; or  
22           ▪ Provides adequate evidence that the appropriate fines have been paid and/or  
23 appropriate restitution has been made; and  
24           ▪ Provides assurances that any policies, procedures, or conditions responsible for the  
25 violation have been corrected and the same or similar violations are not likely to occur in  
26 the future.
- 27           ○ Where the decision is based on a finding of a violation of 20 CFR 658.411, DLI will specify the  
28 finding. The business must be notified that all employment services will be terminated in 20  
29 working days unless the business within that time:  
30           ▪ Provides adequate evidence that the business did not violate 20 CFR 658.411; or  
31           ▪ Provides adequate evidence that appropriate restitution has been made or remedial  
32 action taken; and  
33           ▪ Provides assurances that any policies, procedures, or conditions responsible for the  
34 violation have been corrected and the same or similar violations are not likely to occur in  
35 the future; or  
36           ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.
- 37           ○ Where the decision is based on a business's failure to accept qualified workers referred through  
38 the clearance system, DLI will specify the workers referred and not accepted. The business must  
39 be notified that all employment services will be terminated in 20 working days unless the  
40 business within that time:  
41           ▪ Provides adequate evidence that the workers were accepted; or  
42           ▪ Provides adequate evidence that the workers were not available to accept the job; or  
43           ▪ Provides adequate evidence that the workers were not qualified; and  
44           ▪ Provides adequate assurances that qualified workers referred in the future will be  
45 accepted; or  
46           ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.
- 47           ○ Where the decision is based on lack of cooperation in the conduct of field checks, DLI will  
48 specify the lack of cooperation. The business must be notified that all employment services will  
49 be terminated in 20 working days unless the business within that time:  
50           ▪ Provides adequate evidence that he/she did cooperate; or  
51           ▪ Cooperates immediately in the conduct of field checks; and

- 1                   ▪ Provides assurances that he/she will cooperate in future field checks in further activity;
- 2                   or
- 3                   ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.
- 4 • If the business chooses to respond pursuant to this section by providing documentary evidence or
- 5 assurances, he/she must at the same time request a hearing if such hearing is desired in the event that
- 6 DLI does not accept the documentary evidence or assurances as adequate.
- 7 • Where the decision is based on repeated initiation of procedures for discontinuation of services, the
- 8 business must be notified that services have been terminated.
- 9 • If the business makes a timely request for a hearing, in accordance with this section, DLI will follow
- 10 procedures set forth at 20 CFR 658.411 and notify the complainant whenever the discontinuation of
- 11 services is based on a complaint pursuant to 20 CFR 658.411.
- 12 • If the business does not provide a satisfactory response in accordance with 20 CFR 658.502, within 20
- 13 working days, or has not requested a hearing, DLI will immediately terminate services to the business.
- 14 • If services are discontinued to a business subject to Federal Contractor Job Listing Requirements, DLI
- 15 will notify the ETA regional office immediately.
- 16 • Services may be reinstated to a business after discontinuation under 20 CFR 658.503(a) and (b), if:
- 17     ○ The State is ordered to do so by a Federal ALJ Judge or Regional Administrator; or
- 18     ○ The business provides adequate evidence that any policies, procedures or conditions
- 19       responsible for the previous discontinuation of services have been corrected and that the same
- 20       or similar circumstances are not likely to occur in the future; and
- 21     ○ The business provides adequate evidence that he/she has responded adequately to any
- 22       findings of an enforcement agency, DLI, or ETA, including restitution to the complainant and the
- 23       payment of any fines, which were the basis of the discontinuation of services.
- 24 • DLI will notify the business requesting reinstatement within 20 working days whether his/her request
- 25 has been granted. If DLI denies the request for reinstatement, the basis for the denial will be specified
- 26 and the business must be notified that he/she may request a hearing within 20 working days.
- 27 • If the business makes a timely request for a hearing, DLI will follow the procedures set forth at 20 CFR
- 28 658.417.
- 29 • DLI will reinstate services to a business if ordered to do so by a State hearing official, Regional
- 30 Administrator, or Federal ALJ as a result of a hearing.

## 31 Administrative Requirements:

- 32 • The manager of an office initiating the discontinuation of services must notify the Job Service Bureau
- 33 Chief prior to contacting the DLI Legal team to proceed with the required steps necessary for
- 34 discontinuation.

## 35 References:

- 36 • [39-51-307. Department to create employment service, MCA](#)
- 37 • [29 U.S.C. 49 - United States Employment Service established](#)
- 38 • [20 CFR 658.411 Action on Complaints](#)
- 39 • [20 CFR 658.502 Notification to Employers](#)
- 40 • [20 CFR 658.503 Discontinuation of Services](#)
- 41 • [20 CFR 653.503 Field Checks](#)
- 42 • [20 CFR 658.417 State Hearing](#)