



Montana Department of LABOR & INDUSTRY

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2 **Division: Workforce Services Division**
3 **Category: Wagner-Peyser**
4 **Effective Date: 01-31-18**
5 **Last Revised: N/A**
6 **Policy No.: 01-18**

7 Non-Discrimination and Equal Opportunity Policy

8 **Background:** Wagner-Peyser services must provide equity in services to all job candidates and employers
9 regardless of age, race, sex, color, religion, national origin, disability, political affiliation or belief, and for
10 beneficiaries only, citizenship or participation in a WIOA Title I financially assisted program or activity. This policy
11 replaces ES Policy Manual C2.20, Discriminatory and Affirmative Action on Job Orders, and B3.80, Services to
12 Minorities.

13 **Scope:** This policy applies to all Job Service staff and other WSD staff posting job orders or providing Wagner-
14 Peyser services, Job Service office managers and supervisors, CORE Team members and montanaworks.gov
15 users. This policy is effective January 31, 2018.

16 **Policy:**

- 17 • Job Service Offices shall:
 - 18 ○ Assure that no individual be excluded from participation in, denied the benefits of, subjected to
19 discrimination under, or denied employment in the administration or in connection with any
20 services or activities authorized under the Wagner-Peyser Act in violation of any applicable
21 nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex,
22 color, religion, national origin, disability, political affiliation or belief and citizenship.
 - 23 ○ Assure that discriminatory job orders will not be accepted, except where the stated requirement
24 is a bona fide occupational qualification (BFOQ).
 - 25 ▪ A BFOQ is an exception to the general prohibition against discrimination. Such
26 exceptions should be rare.
 - 27 ▪ A BFOQ means that an employment decision or request based on age, sex, national
28 origin, or religion is based on a finding that such characteristic is necessary to the
29 individual's ability to perform the job in question. BFOQ's must be interpreted narrowly in
30 accordance the Equal Employment Opportunity Commission Regulations.
 - 31 ○ Assure that employers' valid affirmative action requests will be accepted and a significant
32 number of qualified applicants from the target group(s) will be included to enable the employer
33 to meet its affirmative action obligations.
 - 34 ○ Assure that employment testing programs will comply with all applicable federal regulations.
- 35 • If it is determined the job order is discriminatory, CORE Team members or local Wagner-Peyser staff, as
36 appropriate, will notify the employer the job order cannot be accepted unless the discriminatory
37 specification is withdrawn. If the employer refuses to withdraw the specification, the employer will be
38 notified all services shall be suspended until the discrimination issue is resolved. The employer may file
39 an appeal following the [Complaint Policy](#).

1 **Affirmative Action Job Orders:**

- 2 • Wagner-Peyser staff may accept valid affirmative action requests from employers to ensure a significant
3 number of qualified job candidates from target group(s) identified in the request are included to enable
4 the employer to meet their affirmative action obligations. Various laws prohibit listing discriminatory job
5 orders except where the stated requirement is a bona fide occupational qualification. Employers must
6 provide equal employment opportunities to job candidates without regard to race, color, religion, sex
7 (including gender identity, sexual orientation and pregnancy) age, national origin, disability or genetic
8 information in compliance with federal and state laws.
- 9 • To be accepted as an Affirmative Action job order, it must result from at least one of the following:
- 10 ○ A court order;
 - 11 ○ The affirmative action provision of a government contract, grant, loan or the provisions of a
12 federal or state law;
 - 13 ○ Directives of a fair employment practices authority; or
 - 14 ○ A voluntary affirmative action plan adopted pursuant to the Affirmative Action Guidelines of the
15 Equal Employment Opportunity Commission.

16 **Services to Minorities:**

- 17 • Job Service staff will ensure that minorities receive equitable services; including referral to job openings
18 and training opportunities. Job Service staff will:
- 19 ○ Promote employment opportunities for all applicants on the basis of their skills, abilities, and job
20 qualifications.
 - 21 ○ Make no referral of applicants to job orders containing any discriminating specification with
22 regard to age, marital status, national origin, physical or mental disability, political beliefs or
23 ideas, race/color, religion/creed or sex.
 - 24 ○ Refuse to promote or work with any group, agency or institution which illegally discriminates
25 based on age, marital status, national origin, physical or mental disability, political beliefs or
26 ideas, race/color, religion/creed or sex.

27 **References:**

- 28 • [29 CFR 1604 - Guidelines on Discrimination Because of Sex](#)
- 29 • [29 CFR 1605 - Guidelines on Discrimination Because of Religion](#)
- 30 • [29 CFR 1608 - Affirmative Action Appropriate under Title VII of the Civil Rights Act of 1964, as Amended](#)
- 31 • [29 CFR 1627 - Records to be Made or Kept Relating to Age](#)
- 32 • [20 CFR 652.8 \(j 1-5\) - Non-Discrimination and Affirmative Action Requirements](#)
- 33 • [Civil Rights Act of 1964, as Amended](#)
- 34 • [MCA TITLE 49 - Human Rights Act](#)