



Montana Department of LABOR & INDUSTRY

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2 **Division: Workforce Services Division**
3 **Category: Wagner-Peyser**
4 **Original Effective Date: 1/31/2018**
5 **Last Revised: 3/26/2019**
6 **Policy No.: 01-18**

7 Non-Discrimination and Equal Opportunity Policy

8 **Background:** Workforce development services must provide equity in services to all individuals seeking
9 services and employers regardless of race, color, sex, pregnancy, childbirth or medical conditions related to
10 pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic
11 information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military
12 service or veteran status, or marital status.

13 **Scope:** This policy applies to all Montana Department of Labor & Industry (MDLI) Job Service Montana staff
14 and other MDLI Workforce Services Division (WSD) staff posting job orders or providing Wagner-Peyser services,
15 Job Service office managers and supervisors, members and montanaworks.gov users. This policy is effective
16 March 26, 2019.

17 Policy:

- 18 • Job Service Montana offices will:
 - 19 ○ Assure that no individual be excluded from participation in, denied the benefits of, subjected to
20 discrimination under, or denied employment in the administration or in connection with any
21 services or activities authorized under the Wagner-Peyser Act in violation of any applicable
22 nondiscrimination law, including laws prohibiting discrimination on the basis of race, color, sex,
23 pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or
24 religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual
25 orientation, gender identity or expression, national origin, ancestry, age, disability, military
26 service or veteran status, or marital status.
 - 27 ○ Assure that discriminatory job orders will not be accepted, except where the stated requirement
28 is a bona fide occupational qualification (BFOQ).
 - 29 ▪ A BFOQ is an exception to the general prohibition against discrimination. Such
30 exceptions should be rare.
 - 31 ▪ A BFOQ means that an employment decision or request based on age, sex, national
32 origin, or religion is based on a finding that such characteristic is necessary to the
33 individual's ability to perform the job in question. BFOQ's must be interpreted narrowly in
34 accordance the Equal Employment Opportunity Commission Regulations.
 - 35 ○ Assure that employers' valid affirmative action requests will be accepted and a significant
36 number of qualified applicants from the target group(s) will be included to enable the employer
37 to meet its affirmative action obligations.
 - 38 ○ Assure that employment testing programs will comply with all applicable federal regulations.
- 39 • If it is determined the job order is discriminatory, Job Service Montana staff will notify the employer the
40 job order cannot be accepted unless the discriminatory specification is withdrawn. If the employer

41 refuses to withdraw the specification, the employer will be notified all services will be suspended until
42 the discrimination issue is resolved. The employer may file an appeal following the [Complaint Policy](#).

43 Affirmative Action Job Orders:

- 44 • Job Service Montana staff may accept valid affirmative action requests from employers to ensure a
45 significant number of qualified job candidates from target group(s) identified in the request are included
46 to enable the employer to meet their affirmative action obligations. Various laws prohibit listing
47 discriminatory job orders except where the stated requirement is a bona fide occupational qualification.
48 Employers must provide equal employment opportunities, regardless of race, color, sex, pregnancy,
49 childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas,
50 culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or
51 expression, national origin, ancestry, age, disability, military service or veteran status, or marital status.
- 52 • To be accepted as an Affirmative Action job order, it must result from at least one of the following:
 - 53 ○ A court order;
 - 54 ○ The affirmative action provision of a government contract, grant, loan or the provisions of a
55 federal or state law;
 - 56 ○ Directives of a fair employment practices authority; or
 - 57 ○ A voluntary affirmative action plan adopted pursuant to the Affirmative Action Guidelines of the
58 Equal Employment Opportunity Commission.

59 Services to Minorities:

- 60 • Job Service Montana staff will ensure that minorities receive equitable services; including referral to job
61 openings and training opportunities. Job Service staff will:
 - 62 ○ Promote employment opportunities for all applicants on the basis of their skills, abilities, and job
63 qualifications.
 - 64 ○ Make no referral of applicants to job orders containing any discriminating specification with
65 regard to race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or
66 childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition,
67 genetic information, sexual orientation, gender identity or expression, national origin, ancestry,
68 age, disability, military service or veteran status or marital status.
 - 69 ○ Refuse to promote or work with any group, agency or institution which illegally discriminates
70 based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or
71 childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition,
72 genetic information, sexual orientation, gender identity or expression, national origin, ancestry,
73 age, disability, military services or veteran status, or marital status.

74 References:

- 75 • [29 CFR 1604 - Guidelines on Discrimination Because of Sex](#)
- 76 • [29 CFR 1605 - Guidelines on Discrimination Because of Religion](#)
- 77 • [29 CFR 1608 - Affirmative Action Appropriate under Title VII of the Civil Rights Act of 1964, as Amended](#)
- 78 • [29 CFR 1627 - Records to be Made or Kept Relating to Age](#)
- 79 • [20 CFR 652.8 \(j 1-5\) - Non-Discrimination and Affirmative Action Requirements](#)
- 80 • [Civil Rights Act of 1964, as Amended](#)
- 81 • [MCA TITLE 49 - Human Rights Act](#)
- 82 • [29 CFR 30.1 – 30.19 – Equal Employment Opportunity in Apprenticeship](#)
- 83 • [State of Montana Executive Order No. 04-2016 – Prohibiting Discrimination in State Employment and](#)
84 [Contracts](#)