



# Montana Department of LABOR & INDUSTRY

1  
2 Division: Workforce Services Division  
3 Category: Wagner-Peyser  
4 Effective Date: 6/21/2017  
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 an employer to be terminated or  
10 discontinued.

11 **Scope:** This policy applies to all Job Service staff and other WSD staff providing services to job seekers  
12 and employers, Job Service office managers and supervisors, and jobs.mt.gov users. This policy is effective  
13 06/21/2017.

### 14 Policy:

#### 15 Job Seekers:

- 16 • Wagner-Peyser nor WIOA allow for discontinuation of services to a job seeker. Furthermore, MCA 39-51-  
17 307 provides that DLI shall establish and maintain free public employment offices to comply with 29  
18 USC 49. Neither the MCA nor the USC state an allowance for discontinuation of the free public service.
- 19 • The WIOA programs have participant agreements that are signed in the IEP and ISS. The IEP states, "It  
20 has been explained to me and I agree that the ultimate goal or my participation is my placement in  
21 unsubsidized employment, leading to self-sufficiency. I understand my responsibility to work toward this  
22 goal. My failure to meet the conditions of this agreement can result in termination from the program".  
23 The ISS states, "It has been explained to me, and I agree, that the ultimate goal of my participation is  
24 complete secondary school and obtain my diploma or equivalent; and enrollment in post-secondary  
25 education placement; or placement in unsubsidized employment, leading to my self-sufficiency. I  
26 understand it is my responsibility to work toward the ultimate goal. I understand that failure to  
27 participate or meet the conditions of this agreement could result in termination from the program".
  - 28 ○ This agreement allows a WIOA program provider to terminate the participant's participation in a  
29 WIOA funded program. This does not allow DLI to terminate Wagner-Peyser services to the  
30 individual.
- 31 • Job Service currently has an "Acceptable Use Policy" the DLI Legal has reviewed and approved that  
32 states "[The] job service exists to assist the public in seeking and obtaining employment. Job Service  
33 resources, including computers, are provided to the public for the limited purpose of job searches. All  
34 other use is unauthorized"....."This policy is to be interpreted and enforced by job service employees.  
35 Enforcement includes periodic monitoring of computer use. In general, for a first infraction, customers  
36 should be asked to resume job search tasks. For a second infraction in the same day, customers may  
37 be asked to leave the job service for the remainder of the day. Please note that asking a customer to  
38 leave the job service is a serious measure, and should be undertaken only in consultation with the job  
39 service supervisor. Additionally, all such actions should be formally documented."

- 1           o No further discontinuation of service for a job seeker beyond the terms of the “Acceptable Use
- 2           Policy” is authorized.

### 3 Employers:

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

- 1                   ▪ If the job is no longer available, makes assurances that all future job orders submitted
- 2                   will be in compliance with all employment-related laws; or
- 3                   ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.
- 4           ○ Where the decision is based on a finding that employer has misrepresented the terms or
- 5           conditions of employment specified on job orders or failed to comply fully with assurances made
- 6           on job orders, DLI will specify the basis for the determination. The employer will be notified that
- 7           all employment services will be terminated in 20 working days unless the employer within that
- 8           time:
- 9                   ▪ Provides adequate evidence that terms and conditions of employment were not
- 10                  misrepresented; or
- 11                  ▪ Provides adequate evidence that there was full compliance with the assurances made
- 12                  on the job order; or
- 13                  ▪ Provides resolution of a complaint which is satisfactory to a complainant referred by the
- 14                  one-stop; and
- 15                  ▪ Provides adequate assurance that specifications on future orders will accurately
- 16                  represent the terms and conditions of employment and that there will be full compliance
- 17                  with all job order assurances; or
- 18                  ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.
- 19           ○ Where the decision is based on a final determination by an enforcement agency, DLI will specify
- 20           the enforcement agency's findings of facts and conclusions of law. The employer must be
- 21           notified that all employment services will be terminated in 20 working days unless the employer
- 22           within that time:
- 23                   ▪ Provides adequate evidence that the enforcement agency has reversed its ruling and
- 24                   that the employer did not violate employment-related laws; or
- 25                   ▪ Provides adequate evidence that the appropriate fines have been paid and/or
- 26                   appropriate restitution has been made; and
- 27                   ▪ Provides assurances that any policies, procedures, or conditions responsible for the
- 28                   violation have been corrected and the same or similar violations are not likely to occur in
- 29                   the future.
- 30           ○ Where the decision is based on a finding of a violation of 20 CFR 658.411, DLI will specify the
- 31           finding. The employer must be notified that all employment services will be terminated in 20
- 32           working days unless the employer within that time:
- 33                   ▪ Provides adequate evidence that the employer did not violate 20 CFR 658.411; or
- 34                   ▪ Provides adequate evidence that appropriate restitution has been made or remedial
- 35                   action taken; and
- 36                   ▪ Provides assurances that any policies, procedures, or conditions responsible for the
- 37                   violation have been corrected and the same or similar violations are not likely to occur in
- 38                   the future; or
- 39                   ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.
- 40           ○ Where the decision is based on an employer's failure to accept qualified workers referred
- 41           through the clearance system, DLI will specify the workers referred and not accepted. The
- 42           employer must be notified that all employment services will be terminated in 20 working days
- 43           unless the employer within that time:
- 44                   ▪ Provides adequate evidence that the workers were accepted; or
- 45                   ▪ Provides adequate evidence that the workers were not available to accept the job; or
- 46                   ▪ Provides adequate evidence that the workers were not qualified; and
- 47                   ▪ Provides adequate assurances that qualified workers referred in the future will be
- 48                   accepted; or
- 49                   ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.

- 1           ○ Where the decision is based on lack of cooperation in the conduct of field checks, DLI will
- 2           specify the lack of cooperation. The employer must be notified that all employment services will
- 3           be terminated in 20 working days unless the employer within that time:
- 4           ▪ Provides adequate evidence that he/she did cooperate; or
- 5           ▪ Cooperates immediately in the conduct of field checks; and
- 6           ▪ Provides assurances that he/she will cooperate in future field checks in further activity;
- 7           or
- 8           ▪ Requests a hearing from DLI pursuant to 20 CFR 658.417.
- 9       • If the employer chooses to respond pursuant to this section by providing documentary evidence or
- 10       assurances, he/she must at the same time request a hearing if such hearing is desired in the event that
- 11       DLI does not accept the documentary evidence or assurances as adequate.
- 12       • Where the decision is based on repeated initiation of procedures for discontinuation of services, the
- 13       employer must be notified that services have been terminated.
- 14       • If the employer makes a timely request for a hearing, in accordance with this section, DLI will follow
- 15       procedures set forth at 20 CFR 658.411 and notify the complainant whenever the discontinuation of
- 16       services is based on a complaint pursuant to 20 CFR 658.411.
- 17       • If the employer does not provide a satisfactory response in accordance with 20 CFR 658.502, within 20
- 18       working days, or has not requested a hearing, DLI will immediately terminate services to the employer.
- 19       • If services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, DLI
- 20       will notify the ETA regional office immediately.
- 21       • Services may be reinstated to an employer after discontinuation under 20 CFR 658.503(a) and (b), if:
- 22           ○ The State is ordered to do so by a Federal ALJ Judge or Regional Administrator; or
- 23           ○ The employer provides adequate evidence that any policies, procedures or conditions
- 24           responsible for the previous discontinuation of services have been corrected and that the same
- 25           or similar circumstances are not likely to occur in the future; and
- 26           ○ The employer provides adequate evidence that he/she has responded adequately to any
- 27           findings of an enforcement agency, DLI, or ETA, including restitution to the complainant and the
- 28           payment of any fines, which were the basis of the discontinuation of services.
- 29       • DLI will notify the employer requesting reinstatement within 20 working days whether his/her request
- 30       has been granted. If DLI denies the request for reinstatement, the basis for the denial will be specified
- 31       and the employer must be notified that he/she may request a hearing within 20 working days.
- 32       • If the employer makes a timely request for a hearing, DLI will follow the procedures set forth at 20 CFR
- 33       658.417.
- 34       • DLI will reinstate services to an employer if ordered to do so by a State hearing official, Regional
- 35       Administrator, or Federal ALJ as a result of a hearing.

## 36 Administrative Requirements:

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

## 40 References:

- 41       • [39-51-307. Department to create employment service, MCA](#)
- 42       • [29 U.S.C. 49 - United States Employment Service established](#)
- 43       • [20 CFR 658.411 Action on Complaints](#)
- 44       • [20 CFR 658.502 Notification to Employers](#)
- 45       • [20 CFR 658.503 Discontinuation of Services](#)
- 46       • [20 CFR 653.503 Field Checks](#)

- 1
  - [20 CFR 658.417 State Hearing](#)