



JOB ORDER GUIDE
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A. Entering and Approving Job Orders

1. When a staff-entered job order and file search is completed, staff should enter service code **JO** on the employer account in Connecting Colorado.
2. When an employer enters a job order, it should be approved by staff and a file search completed. Staff must verify that the employer is an approved web account and reference the employer verification guide. Staff should enter service code **AW** to approve web job and auto file search on the employer account in Connecting Colorado.
3. When entering H-2A job orders, follow steps 1 and 2 and refer to [PGL # WP-2011-01](#).
4. When entering H-2B job orders, follow steps 1 and 2 and refer to [PGL # WP-2008-02](#).

NOTE: The employer account has been verified at the U.S. Department of Labor Regional Office for all H-2A and H-2B job orders (see PGL [WP-2008-02, Employment Eligibility Verification Required for Temporary H-2A & H-2B Referrals](#)). If you have a question about an H-2A or H-2B employer account, contact the Foreign Labor Certification Coordinator in Workforce Development Programs at (303) 318-8961 prior to entering job orders.

B. Refusing, Discontinuing, or Limiting Services to an Employer

1. Workforce centers may refuse or discontinue services to an employer if the employer's job orders meet any of the conditions for refusal specified in this Attachment 3+, or if the employer refuses to cooperate with the workforce center's request for job order verification. Workforce centers should set a local standard for terminating or refusing services based on lack of cooperation from the employer, and notify CDLE's Workforce Services Coordinator when this happens, as well as document the rationale for the refusal, discontinuation, or limited service on the note screen in Connecting Colorado. If discontinuation is the result of suspected fraudulent activity, refer to Attachment 2 of this PGL.
2. Workforce centers must refuse or discontinue services to an employer when CDLE's Monitor Advocate has determined through the Employment Service Complaint System (PGL ADM-2017-01) that an employer has violated the terms or conditions of a job order or provisions of employment related law. CDLE will notify the workforce center when such decisions have been made.
3. Workforce centers should set a local standard for limiting services to an employer- Workforce centers are encouraged to coordinate standards for limiting services to an employer with workforce centers sharing the same labor market area.
4. It is strongly encouraged that all closed accounts show a good faith effort to resolve concerns prior to account closure. Employer account notes must explain the rationale for closing the employer's account (i.e. discriminatory in nature, duplicate accounts, etc.).
5. As of January 1, 2017, fraudulent job orders must be flagged by staff in Connecting Colorado. The flag will be visible to all staff with access to Connecting Colorado and a notification email will be sent out (see **Attachment 2, Employer Verification in Connecting Colorado Guide**).

C. Quality Standards for Job Orders

1. On an annual basis, CDLE's Program Monitors will review a sample of job orders as part of their annual compliance monitoring of workforce centers. The sample will not include orders from US Jobs. Each job order selected will be expected to meet the following minimum standards:
 - a. It is legal and allowable under the law, regulations, or policies governing the Wagner-Peyser program.
 - b. It has complete and accurate data including location of the job site, application instructions, O-Net code, hours of position, and duration of the job.
 - c. It is "online-ready" (i.e. the most important elements of job description can be viewed and understood by the job seeker and no extraneous or confidential information is going out over the internet). In the event a job order is placed by an employer, DO NOT significantly modify the post without consent or unless there is something discriminatory in nature, and inform the employer of the change(s).
 - d. It contains documentation that the "first auto file search" was completed. This initial auto file search should be reflected in the "first AFS" line of the job order display. This will ensure that the veterans' file search requirement on all job orders, except filled-when-written orders and multi-opening job orders, has been met.
 - e. Web and staff entered job orders contain documentation of follow-up contacts (FC service code) with the employer based on local policy or procedures. Detailed notes on the services provided are encouraged but not required. The timing of follow-up contacts will be determined by local job order policies or as specified by the employer.
 - f. Employer accounts and job orders should have the status updated within a reasonable period of time of the data entry into Connecting Colorado based on local policy or procedures unless otherwise documented (i.e. unable to reach).
2. **Staff-Entered Job Orders:** Workforce centers are responsible for setting local standards for quality of job orders and assuring that these standards are met. The State's minimum standards will be incorporated in the local standards. In addition, the workforce centers will determine procedures for internal monitoring of job order quality.
3. **Web-Entered Job Orders:** Web employers must be contacted prior to approval of their initial job order in Connecting Colorado.
4. **Job Orders Transferred from Outside Entities:** Jobs that automatically transfer to Connecting Colorado from state-approved outside entities (i.e. US Jobs) will adhere to the minimum job requirements in #5 below. Workforce centers should have policy and procedure guidelines to determine how an employer becomes "Trusted." A "Trusted" employer is one that has been determined to meet all the guidelines of an approved job order and deemed to not need verification. Local policy must outline local processes to "un-Trust" an employer in the event that job orders become compromised.
5. **Minimum Job Requirements:**
 - a. Job orders that do not guarantee minimum wage will not be posted. If a wage is not identified in the job order, it is encouraged that workforce centers attempt to verify the wage. If verification of minimum wage is not attainable, the job may still be posted.
 - b. Job orders that that identify a fee for placement will not be posted.

- c. Job orders that do not identify an employer-employee relationship will not be posted.
- d. Jobs that are not bona fide will not be posted.
- e. Jobs that pre-designate applicants, with the exception of a job requiring a bona fide occupational qualification (**BFOQ**), will not be posted. (Wagner-Peyser regulations define a BFOQ to mean that an employment decision or request relating to age, sex, national origin, or religion is based on a finding that such a characteristic is necessary to the individual's ability to perform the job in question.)
- f. Jobs that are discriminatory or are in violation of the law will not be posted.
- g. Jobs that are attached to a labor dispute will not be posted.
- h. Jobs that identify a requirement to be a member of or a non-member of a labor union will not be posted.

D. Types Of Job Orders and Appropriate Actions

Although the principle of universal access applies to the provision of services to employers, there are a number of circumstances in which a workforce center is required by law, regulation, or policy to refuse a job order.

1. Orders Involving a Fee for Placement

- a. A fee for placement is a charge that consists of direct payment in exchange for the job opening being filled. If an employer, or agency recruiting for an employer, wishes to place a job order that would charge the applicant a fee for placement, the workforce center cannot take the order. The employer or agency must be informed why the order is being refused.
- b. The purchase of materials, equipment, and uniforms or payment for testing and licensing by an applicant are not considered fees for placement. If the employer requires that the applicant pay for such items, the job order can be taken as long as the required expenses are listed on the order.
- c. The Wagner-Peyser Act does not prohibit the referral of an applicant to a private employment agency as long as the applicant is not charged a fee.

2. Orders Where an Employer-Employee relationship does not exist

- a. An employer is defined by Wagner-Peyser regulations, in part, as a person, firm, corporation, or other organization that has a location within the United States to employ workers, and that hires, pays, fires, supervises, and otherwise controls the work of its employees.
- b. Typically an employer-employee relationship does not exist if the worker is an independent contractor, and/or the employer does not pay Unemployment Insurance (UI) taxes or provide Workers' Compensation on behalf of the worker.
- c. An employer pays UI taxes on domestic workers only if the worker earns at least \$1,000 in a calendar year. Workforce centers have the discretion to either accept or refuse job orders for domestic workers who do not have the potential to earn \$1,000 in a year.
- d. The Colorado Employment Security Act states that an employer-employee relationship does not exist when a worker is paid straight commission. An employer must guarantee at least minimum wage to an employee in order for an employer-employee relationship to be established. Job orders for commission-only positions will be

refused. Examples are commission-only sales, real estate agents, cab drivers, limousine drivers, insurance agents and newspaper delivery persons.

- e. In cases where there is an employer-employee relationship, workforce centers are required to refuse these job orders where the employer doesn't pay for Workers Compensation Insurance. Workers' Compensation verification can be obtained directly from the employer or at <https://www.ewccv.com/cvs/>.

3. Orders That May Not Be Bona Fide

- a. A bona fide job order means that a current and valid job opening exists prior to any referrals being made, and that the workforce center has reason to be confident that the employer is a legitimate employer. Workforce centers should be alert to the possibility that a job opening or an employer may not be bona fide. Examples of questionable situations may include:
 - i. When an employer requires any unusual pre-employment action on the part of the applicant such as a deposit for some alleged service (e.g., transportation, dues, food, or lodging); or
 - ii. When an unknown employer requests permission to interview applicants at an address that is not a normal place of business, such as a hotel room.
- b. Job orders that are received to build a list of applicants for future openings may be issued a waiver under local policy guidelines and should be identified as such to job seekers.
- c. When a questionable situation arises, the workforce center must attempt to verify the legitimacy of the employer by following the process outlined in **Attachment 2, Employer Verification in Connecting Colorado Guide**.
- d. If the workforce center cannot verify that the opening and employer is bona fide, the job order must be refused.

4. Orders Pre-designating Applicants To Be Referred

- a. When an employer requests that certain workers be referred on any basis other than an occupational qualification, the job order must be refused. For example, an employer might identify a specific individual to be referred, and indicate that they are not willing to consider other applicants. Such requests for referrals are considered pre-designation of applicants and make a job order unacceptable. However, an order may be taken if the employer requests that a specific person be referred and is also willing to consider other referrals.
- b. An employer may request the referral of individuals who were previous employees before they are willing to consider the referral of other qualified applicants. In this instance, the order may be taken.
- c. An exception to the rule on pre-designation occurs when an employer lists an agricultural job order. In this instance, the employer may request a specific crew leader or worker, and the job order can be accepted.

5. Orders That Are Discriminatory

- a. The Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay fringe benefits, and other aspects of employment, on the basis of race, color, religion, sex, disability, or national origin.
- b. The Age Discrimination In Employment Act of 1967 prohibits arbitrary age discrimination in employment against individuals 40 years of age or older by:
 - i. private employers having 20 or more employees and engaging in an industry affecting interstate commerce, or
 - ii. any government entity.
- c. The Rehabilitation Act of 1973 prohibits employers meeting certain standards from discriminating against qualified disabled applicants.
- d. The Civil Rights Act of 1964 and Wagner-Peyser Act require that the labor exchange system ensure that discriminatory job orders are not accepted. In addition, the Civil Rights Act of 1964 prohibits the labor exchange system from providing any service to an employer when there are reasonable grounds (i.e. documented evidence) to believe that the employer is engaged in discriminatory practices.
 - i. Training and Employment Guidance Letter No. 31-11 accessible at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9230 further details information about exclusion based on criminal records.
 - ii. Business Development Representatives will provide guidance and the appropriate notices to any hiring authority posting a job on Connecting Colorado. Notices may be provided electronically via email, sent through U.S. mail, or by guiding the employer to the appropriate links provided below.
 - Notice #1 (http://wdr.doleta.gov/directives/attach/TEGL/TEGL_31_11_att1.pdf) is provided at time of post and details compliance with federal civil rights laws and likely disparate impact of criminal records exclusion and provides information about obligations under the Fair Credit Reporting Act, which requires permission before asking for a background or criminal history report;
 - Notice #2 (http://wdr.doleta.gov/directives/attach/TEGL/TEGL_31_11_att2.pdf) will be provided to employers who exclude individuals based on arrest/conviction history and provides an employer an opportunity to remove or edit the post;
 - Notice #3 (http://wdr.doleta.gov/directives/attach/TEGL/TEGL_31_11_att3.pdf) is provided to job seekers who receive referrals with criminal records exclusions. This notice refers to jobs containing language excluding candidates based on criminal history detailing adverse impact on protected groups as set forth in the EEOC guidance. The notice further informs job seekers and individuals with criminal history records are not prohibited from applying for posted positions.
 - iii. Workforce staff will refrain from screening and refusing to make referrals based on criminal history records and will provide Notice #3 and job announcement when job seeker is referred to a job posting that takes criminal records into account.

- e. **Religious Organization Exception:** Under Title VII, religious organizations are permitted to give employment preference to members of their own religion. The exception applies only to those institutions whose “purpose and character are primarily religious.” Factors to consider that would indicate whether an entity is religious include: whether its articles of incorporation state a religious purpose; whether its day-to-day operations are religious (e.g., are the services the entity performs, the product it produces, or the educational curriculum it provides directed toward propagation of the religion?); whether it is not-for-profit; and whether it affiliated with, or supported by, a church or other religious organization. This exception is not limited to religious activities of the organization. However, it only allows religious organizations to prefer to employ individuals who share their religion. The exception does not allow religious organizations otherwise to discriminate in employment on the basis of race, color, national origin, sex, age, or disability. Thus, a religious organization is not permitted to engage in racially discriminatory hiring by asserting that a tenet of its religious beliefs is not associating with people of other races. Additional guidance can be found at www.eeoc.gov/policy/docs/qanda_religion.html.
- f. An exception to the nondiscrimination laws is a situation involving a bona fide occupational qualification (BFOQ). In the event a job order identifying a BFOQ is taken, the rationale will be noted in the job order as a precaution. Examples of BFOQ’s would be a request for an actress to portray a female role in a play or movie, or male attendant to serve in a men’s locker room. Certain jobs have bona fide age requirements based on agility (e.g. fire fighter or police officer) or other factors. Orders with acceptable BFOQ’s may be written and serviced.
- g. Should an employer wish to list an opening containing discriminatory specifications and a BFOQ does not exist, the workforce center will attempt to persuade the employer to eliminate those discriminatory specifications. If the employer is willing to change the requirements, the order can be accepted. Otherwise, the order must be refused.

6. Affirmative Action Orders

- a. An affirmative action job order is one that seeks qualified applicants, particular members of a specified group that, for non-occupationally valid purposes, have been discouraged from entering certain occupational fields. In addition, it is an order that results from:
 - i. Executive Order No. 11246 and implementing instructions at 41 CFR Chapter 60, requiring certain government contractors to take affirmative action to hire and promote qualified minorities and women; or
 - ii. Section 503 of the Rehabilitation Act of 1973 and implementing regulations at 41 CFR Part 60-471 requiring certain government contractors to take affirmative action to employ and advance in employment qualified disabled workers; or
 - iii. A court order resulting from a decision in which there was a finding of employment discrimination; or
 - iv. A conciliation agreement as authorized by Title VII of Civil Rights Act; or
 - v. Provisions of Federal, State, or local fair employment practice law; or
 - vi. An affirmative action plan adopted pursuant to the Equal Employment Opportunity Commission’s guidelines on Affirmative Action (29 CFR part 1608).

- b. Workforce centers will accept all legitimate affirmative action job orders and may assist the employer with special applicant searches and recruitment efforts to ensure that a significant number of qualified applicants from the target group(s) will be included to enable the employer to meet its affirmative action obligations. However, applicant file searches must follow the veterans' preference requirements described in [PGL VET-2014-02, Priority of Services for Veterans and Eligible Spouses](#). For example, if an employer requests that a special search be done for minorities, minority veterans must be given preference for referral to the job.
- c. An affirmative action order will be clearly marked as affirmative action and clearly reflect the employer's needs. An example of appropriate language to be included in the job description might be: "Affirmative Action: All qualified applicants will be considered. Minorities and women encouraged to apply."

7. Orders that Are In Violation of Law

- a. Job orders that contain job duties or terms or conditions of employment that are contrary to law will be refused. Examples of such orders would be those specifying pay below the legal minimum wage, requiring the worker to perform illegal activities, or specifying hours for a youth worker in violation of child labor laws.
- b. Marijuana possession or use violates federal law, and federal funds cannot be used to support violations of federal law. Therefore, the State of Colorado cannot use WIOA, Wagner-Peyser or any other funds they receive from CDLE to post job orders or in any other way help employers to fill positions that promote or support the use, possession or distribution of marijuana.
- c. Workforce centers will explain the legal basis for refusing the order to the employer and offer the opportunity for the order to be modified. If the employer agrees to an appropriate modification, the job order may be accepted. Otherwise, the order must be refused.

8. Orders Impacted By a Labor Dispute

- a. A labor dispute is any controversy concerning the terms or conditions of employment, or any controversy concerning the association or representation of individuals in negotiating, maintaining, changing, or seeking to arrange the terms or conditions of employment.
- b. When a labor dispute results in a work stoppage (such as a labor strike, walkout, or lockout), workforce centers are restricted from accepting or servicing orders for positions that are vacant because the former occupant is on strike, is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in the labor dispute involving a work stoppage.
- c. Workforce centers may accept job orders from an employer involved in a labor dispute until such time as a work stoppage occurs, and for positions that are not impacted, either directly or indirectly, by the work stoppage. Should job orders for positions not impacted be taken from an employer involved in a work stoppage, workforce centers are responsible for notifying any applicants referred that the employer is involved in a labor dispute and that the position listed with the workforce center is not vacant as a result of the dispute. Workforce centers are encouraged to include this information in the job description of the job order.

- d. CDLE's Workforce Development Programs is legally responsible for official notification to workforce centers regarding labor disputes resulting in work stoppage, and for official notification to workforce centers when labor disputes have been resolved. These notifications determine when the restrictions and requirements described in subsections a., b., and c. above must begin and when they should end.
- e. Workforce centers should be alert to labor disputes that are developing in their local areas and are encouraged to contact the State Monitor Advocate at CDLE's Workforce Development Programs with information on any such disputes. This will help facilitate timely notification to all the local areas should work stoppage occur.

9. Orders Specifying Membership or Non-membership in Labor Organizations

- a. Orders specifying membership in a labor organization as a condition of being hired may be in violation of law if the employer is subject to the Labor-Management Relations Act of 1947.
- b. However, if the employer requires an employee to join a labor organization on or after the 30th day of employment, and this requirement is pursuant to the employer's agreement with the labor organization, the order is not in violation of the Act. In the case of the building and construction industries, the requirement to join a labor organization may be on or after the 7th day of employment.

10. Orders From Temporary Agencies, Labor Union, or Third Party Post

- a. In general, job orders received from a temporary agency, labor unions, or third party vendors will be handled in the same manner as those from any other employer. However, workforce centers should be alert to whether job orders from these organizations have current and valid job openings and are not for the purpose of building lists of applicants for future openings.
- b. Workforce centers will also make certain that a job order from a temporary agency, labor union, or third-party vendor does not duplicate an order listed by an employer that the union or agency may be representing. To accomplish this, workforce centers will obtain the name of the employer being represented whenever possible and compare any listing from that employer with those received from the representative. Duplicates will be eliminated. The determination of which duplicate orders should be kept or deleted is the responsibility of the local workforce center.
- c. When an order is refused or closed the workforce center will document the rationale on the note screen.
- d. In the event a temporary agency, labor union, or third party vendor is unable to provide job posts following the guidelines outlined in this guide, workforce centers must alert CDLE's Workforce Services Coordinator. While local areas do have the ability to close an account from temporary agencies, labor unions, and third party posters, workforce areas will provide documentation describing all efforts to mitigate violations. Because temporary agencies, labor unions, and third party posters may represent multiple employers needing to meet federal job post requirements, enforced by the Office of Federal Contract Compliance Programs (OFCCP), it is imperative to provide guidance to these entities. Furthermore, because multiple companies can be impacted by the closure of these accounts and not all local areas may experience concerns, WDP will work with the entity to develop a process improvement plan. During the development of this plan, WDP may enforce a 90 day resolution period.

During this 90 day period, jobs will not be taken by these agencies. When the agency is able to address any and all issues that led to the account being closed and addresses all areas of concern, the account will be reactivated. During the 90 day resolution period, Workforce centers will work directly with the employer to post jobs and verify if the employer's job is being posted through Job Central.

11. Orders That Are “Filled-When-Written”

- a. A filled-when-written (FWW) job order is one that has been filled prior to the time of input into the computer database and is not subject to the veterans' file search requirement.
- b. The use of a FWW job order is appropriate when:
 - i. The opening is the result of job development for an individual applicant and the applicant is referred and hired before the order is written; or
 - ii. A hire is a result of a job fair or other mass hiring activity; or
 - iii. A hire results from a work experience, an on-the-job (OJT) training contract, or other subsidized employment opportunity; or
 - iv. The job order specifies that applicants must belong to a targeted group such as welfare recipients, dislocated workers, etc.; or
 - v. The opening is a 1-3 day casual labor position; or
 - vi. An applicant is hired for a job other than the job to which he was referred; or
 - vii. A job order needs to be rewritten due to an end-of-program year data processing issue.
- c. A FWW job order does not require a job description. In place of the job description, the order will state that it is filled-when-written and indicate the reason why (ex: FWW job fair placement)

12. Orders that Are Substandard for the Local Labor Market

- a. A job order is considered substandard when an employer is offering wages that are below the prevailing wage in a local labor market, or hours and working conditions that are below the standard in a local labor market for similar workers in a particular type of work. Working conditions should comply with applicable federal and state health and safety standards and employment-related laws.
- b. Should a job order be considered substandard, the workforce center will provide the employer with appropriate labor market information and offer the employer the opportunity to modify the job order.

13. Orders From Employers Refusing to Provide Salary Information

- a. Employers frequently refuse to provide salary information. When this happens, the pay field on their job order is displayed as “negotiable” to job seekers, which can be misleading.
- b. Workforce centers will not refuse a job order or limit services to an employer solely on this basis that salary information has not been provided. Workforce center staff is encouraged to work with the employer to obtain a salary range, at a minimum, and the actual salary if possible. At a minimum, workforce staff will attempt to verify that an employer meets current minimum wage requirements if that employer does not choose to disclose salary.