



# Guidelines for Conducting Labor Exchange Activities

Approval Date: December 5, 2025

## Purpose

The purpose of this policy is to provide guidelines to the OhioMeansJobs Cleveland-Cuyahoga Center (OMJCC) for conducting labor exchange activities specific to employer services. These activities include accepting or refusing job orders, discontinuing, or refusing services to employers, limiting services provided to employers, and ensuring quality control of job orders.

## Policy

The OMJCC Operator, in coordination with Greater Cleveland Works and other partners, will develop procedures that contain the following:

1. A uniform method of determining when job orders are accepted or rejected; what constitutes a bona fide job order; and what quality control standards should be used for writing and posting job orders onto OhioMeansJobs.com.
2. General guidance, with additional detail as needed or desired, to assist staff in properly implementing the employer services elements of the labor exchange program.

## Types of Unsuitable Job Orders and Appropriate Actions

Although assistance in development of job order requirements is a labor exchange activity offered to employers, there are circumstances in which OMJCC is required by law, regulation, or policy to reject a job order. The following information describes specific circumstances surrounding job orders and the appropriate action when one must be rejected.

### 1. Fee for Placement

OMJCC should not accept a job order if the employer or a staffing agency recruiting for an employer requires the applicant to pay a fee to apply for, be referred to, or be considered for employment. Universal access to basic labor exchange services will be at no cost to job seekers. The OMJCC should help the employer understand why the order is rejected.

If the employer requires the applicant to pay for materials, equipment, and uniforms or for testing and licensing, the job order may be taken as long as the required expenses are listed on the job posting. These items are not considered to be fees for placement.

### 2. Independent Contractors

The purpose of labor exchange is to facilitate employment. Job orders will only be accepted that offer employment opportunities where an employer-employee relationship exists. Typically, an employer-employee relationship does not exist if the worker is an independent contractor. Independent contractor opportunities are self-employment, which represents business opportunities, rather than employment. The individual is responsible for paying his/her own quarterly income taxes, disability insurance in lieu of Workers' Compensation, Social Security taxes, and other such costs of doing business.

The determination as to whether a job opening will be for an employee or an independent contractor can be complex but is made by examining the right to control how, when, and where



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the person performs services. One test used to distinguish an independent contractor opportunity from a legal employment opportunity is:

- If the employee is issued an IRS Form W-2, it is employment.
- If the individual is issued an IRS Form 1099, it is an independent contractor opportunity.

Examples representing some occupations that are usually considered independent contractors are home-based businesses (e.g., Tupperware, Amway); independent insurance agents; real estate brokers; or truck drivers who are owner/operators.

### 3. Non-Bona Fide Job Orders

OMJCC staff may process bona fide job orders. However, job orders that are received to build a list of applicants for future openings are not bona fide orders and must be refused and not posted to OhioMeansJobs.com.

OMJCC should also be alert to the possibility that a job opening or an employer may not be bona fide. Examples of questionable situations may be:

- 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, purchase of equipment, dues, food, or lodging); or
- When an unknown employer indicates that applicants will be interviewed at an address that is not a normal place of business, such as a hotel room.

If OMJCC cannot verify that the opening or employer is bona fide, the job order must be refused and must not be posted on OhioMeansJobs.com.

### 4. Pre-designation of Applicants

When an employer requests that certain workers be referred on any basis other than an occupational qualification, the job order should be refused and not posted on OhioMeansJobs.com. For example, an employer might identify a specific individual to be referred and indicate that he or she is not willing to consider other applicants. Such requests for referrals are considered pre-designation of applicants and make a job order unacceptable.

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. Another exception would be if the employer requests that a specific person be referred and is also willing to consider other referrals. With both exceptions, the job orders should be accepted.

### 5. Discrimination and Restrictions

#### Discrimination

There are various federal laws and regulations which prohibit discriminatory employment practices.

- a. Title VII of the Civil Rights Act of 1964, 42 USC § 2000d et seq., prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, and other aspects of employment,



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on the basis of race, color, religion, sex, or national origin.

- b. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance, which would include most workforce development programs and services administered by ODJFS. (Refer to WIOA Section 188.)
- c. The Age Discrimination in Employment Act of 1967 prohibits arbitrary age discrimination in employment against individuals 40 years of age or older by: 1) private employers having 20 or more employees and engaging in an industry affecting interstate commerce, or 2) any governmental entity.
- d. The Americans with Disabilities Act of 1990 (ADA), 42 USC § 12101 et seq., prohibits employment discrimination against qualified individuals with disabilities.
- e. Section 504 of the Rehabilitation Act of 1973, 29 USC § 794, prohibits discrimination against qualified disabled applicants in federally funded programs and services, including WIOA and OhioMeansJobs Center services (refer to WIOA Section 188).
- f. Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) which prohibits employment discrimination based on genetic information about an applicant, employee, or former employee.

The Civil Rights Act of 1964 and the Wagner-Peyser Act require that the labor exchange system ensures 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.

An exception to the nondiscrimination laws is a situation involving bona fide occupational qualification (BFOQ). Certain jobs have bona fide age requirements based on agility (e.g. fire fighter or police officer), legal requirements (e.g. bartender), or insurance requirements (e.g. commercial drivers). Orders with acceptable BFOQs may be written and serviced (refer to 42 U.S.C. § 2000).

Should an employer wish to list an opening containing discriminatory specifications, and a BFOQ does not exist, OMJCC should advise the employer that due to the discriminatory specifications, the job order cannot be posted. If the employer is willing to change the requirements, the order may be accepted. Otherwise, the order must be refused and not posted to OhioMeansJobs.com.

## Restrictions

While there are a limited number of instances where the law prohibits or restricts the hiring of an individual with justice system involvement, employers are generally not allowed to have blanket bars against the referral or hiring of individuals with justice system involvement.



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Employers are permitted to consider the relationship between the conviction record and the job position itself.

Hiring restrictions based on prior justice involvement must be "job-related" and consistent with "business necessity." Employers should consider the nature and gravity of the incident of justice system involvement; the time that has passed; and the nature of the job before disqualifying an individual from employment based on prior justice involvement.

If an employer attempts to place a job order and includes a restriction such as "no felony convictions" or "no misdemeanors" or "clean background check," OMJCC staff should discuss the reason for the restriction with the employer. If no clear "business necessity" or "job-related" basis can be documented, OMJCC must inform the employer that the requirement is restrictive and must be removed. If the employer will not agree to remove the restriction, the job order must be refused and not posted to OhioMeansJobs.com.

## 6. Credit History

Although individuals with negative credit histories are not a protected group under the applicable federal civil rights laws, and the Fair Credit Reporting Act (FCRA) permits the use of credit reports for employment decisions, antidiscrimination laws may be implicated when credit history is used to make employment decisions. For example, if an employer screens out all workers who have a negative credit history, this may have an unequal impact on certain protected groups whose members have an undesirable credit history at a disproportionately higher rate than other groups.

OMJCC should accept and process job orders using safeguards to prevent discrimination against individuals in protected groups based on their credit information by ensuring job orders are handled in the following manner:

- OMJCC staff should advise employers not to automatically exclude job seekers based on their credit history or any other hiring criterion unless it is job-related and consistent with business necessity. Staff should also inform employers of their obligations under FCRA, which requires employers to obtain applicants' permission before asking a consumer reporting agency for a credit report and to provide applicants with a copy of the report and a summary of their rights before taking adverse action, such as denying employment.
- OMJCC should have a process, similar to the one used to identify other discriminatory language, for identifying job orders that include hiring restrictions based on credit history.
- When a job posting excluding applicants based on credit history has been identified, the OMJCC staff must provide employers the opportunity to remove or edit the job order.

Any job posting containing language that excludes candidates based on credit history should be posted only if there is an explanation that the exclusion in the job posting may be unlawful under certain circumstances and there is a notification informing the job seeker that OMJCC



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does not prohibit individuals with negative credit history from applying for the posted position. The notification should also include how the job seeker may obtain a free copy of their credit report. OMJCC staff should forward all job seekers' applications to employers who otherwise meet the job qualifications, despite the language in the job order excluding candidates based on their credit history.

## 7. Affirmative Action

An equity-focused job order seeks qualified applicants, with particular outreach to members of underrepresented groups who may have been historically discouraged—due to non-job-related factors—from entering certain occupational fields. In addition, it is an order that results from:

- a. Executive Order No. 11246 and implementing instructions at 41 C.F.R. Chapter 60, requiring certain government contractors to take affirmative action to hire and promote qualified minorities and women; or
- b. Section 503 of the Rehabilitation Act of 1973 and implementing regulations at 41 C.F.R. Part 60-741 requiring certain government contractors to take affirmative action to employ and advance in employment qualified disabled workers; or
- c. Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C § 4212 and implementation of regulations at 41 C.F.R. Parts 60-250 and 60-300, which requires government contractors and subcontractors to list most employment openings with an appropriate employment service delivery system. In part, requires affirmative action to employ and advance in employment qualified protected veterans; disabled veterans; recently separated veterans; active-duty war time or campaign badge veterans; and Armed Forces service medal veterans; or
- d. A court order resulting from a decision in which there was a finding of employment discrimination; or
- e. A conciliation agreement as authorized by Title VII of the Civil Rights Act; or
- f. Provisions of federal, state, or local fair employment practice law; or
- g. An affirmative action plan adopted pursuant to the Equal Employment Opportunity Commission's guidelines on Affirmative Action (29 C.F.R. Part 1608).

OMJCC should accept all legitimate equity-focused job orders and may assist the employer with special applicant searches and recruitment efforts. However, applicant resume searches must follow the standard job order processing procedures, including veteran preference requirements. Employers should be advised that an order that requires exclusive referral of a specific applicant group, or referral of a specific applicant group "quota," cannot be serviced if these restrictions are held.



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An equity-focused job order should be clearly marked as affirmative action and clearly reflect the employer's needs. An example of appropriate language to be included in the job order requirements section might be: "Affirmative Action: All qualified applicants will be considered. Minorities and women encouraged to apply."

## **8. Violations of Law**

Job orders that contain job duties or terms or conditions of employment that are contrary to law must be refused. Examples of such orders would be those specifying pay below the legal minimum wage (without the provision of earning tips), requiring the worker to perform illegal activities, or specifying hours for a youth worker in violation of child labor laws.

OMJCC staff must 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 and not posted to OhioMeansJobs.com.

## **9. Labor Disputes**

When a labor dispute results in a work stoppage (such as a labor strike, walkout, or lockout), OMJCC is restricted from accepting or servicing job orders that will directly, or indirectly, aid in filling positions 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 (refer to 20 C.F.R. 652.9).

OMJCC may accept job orders from an employer involved in a labor dispute until a work stoppage occurs and may accept job orders during a work stoppage as long as the orders are for positions that are not impacted, either directly or indirectly, by the work stoppage.

When job orders for positions not impacted are taken from an employer involved in a work stoppage, OMJCC staff is responsible for notifying any applicants referred that the employer is involved in a labor dispute and that the position listed on the job order is not vacant because of the dispute. OMJCC is encouraged to include this information in the job description of the job order.

Once a labor dispute resulting in a work stoppage has been resolved, OMJCC may once again resume full service to the employer (refer to 20 C.F.R. 652.9).

OMJCC staff should be alert to labor disputes that are developing in their areas and are encouraged to contact their ODJFS Program Delivery Manager with information on any such disputes. This will help facilitate timely notification of all impacted areas should a work stoppage occur.



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## **10. Membership or Non-membership in a Labor Organization**

Orders specifying membership or non-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 (Taft-Hartley Act). (Refer to 29 U.S.C. § 158(a)). If the job order is in violation with this law, the job order must be refused and not posted on OhioMeansJobs.com.

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 job order would not be in violation of the Act and should be accepted. In the case of the building and construction industries, the requirement to join a labor organization may be on or after the seventh (7th) day of employment (refer to 29 U.S.C. § 158(a)(3)).

## **11. Staffing and Temporary Agencies**

Both staffing and temporary agencies may use the self-service functionality of OhioMeansJobs.com for job posting and resume searches, as well as other features such as the training center, workforce program locator, etc. Any posting by either a staffing or temporary agency must be for a current and valid job opening.

### **A. Staffing Agencies**

Based upon their working relationship, staffing agencies and OMJCC may partner and coordinate their work efforts for job posting and resume searches. In doing so, the OMJCC staff should be alert to whether job orders from staffing agencies are current and valid job openings and are not for the purpose of building lists of applicants for future openings. Furthermore, staff should also make certain that the job orders are not a duplicate order listed by an employer that the staffing agency may be representing.

### **B. Temporary Agencies**

If a temporary agency working on behalf of an employer contacts the OMJCC for assistance, staff can assist the temporary agency by demonstrating the self-service functionality of OhioMeansJobs.com. It is expected that the temporary agency will complete their own job postings, resume searches, and other services within OhioMeansJobs.com without the assistance of OMJCC or partner staff.

## **12. Casual Labor**

Workers performing casual labor are either independent contractors or employees. An example may be someone who was hired for one day to clean the windows of a business or a group that is hired for a few hours to unload new office furniture. The hiring company's legal obligations to workers performing casual labor are the same as for other workers. Therefore, OMJCC should be careful to verify an employee-employer relationship and not a posting for an independent contractor.



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## 13. Substandard Job Orders

A job order should be considered substandard when an employer is offering wages or hours that are below the standard in a labor market for a particular type of work. OMJCC staff should be aware of local labor market information (LMI), such as average wage by occupation, to establish local standards and policies regarding what job orders are to be considered substandard. Further information on LMI is located at <http://ohiolmi.com/>.

If a job order is considered substandard, OMJCC staff should provide the employer with appropriate labor market information and offer him or her opportunity to modify the job order. If the employer agrees to an appropriate modification, the order should be accepted and posted on OhioMeansJobs.com. If not, OMJCC must inform the employer that staff cannot post the job order and that the employer will have to post the job order using self-service OhioMeansJobs.com.

## Processing Job Orders

Those providing Wagner-Peyser and veteran services and those working in local Workforce Area 3 who process job orders are required to do so in OhioMeansJobs.com.

All workforce system partners within Cuyahoga County must use the unique Federal Employer Identification Number (FEIN), established for OMJCC, for registering in OhioMeansJobs.com as an employer to conduct resume searches.

Job posting types listed on OhioMeansJobs.com are as follows:

- Agriculture, Foreign Labor Certification (FLC)
  - A. Regular Agricultural Job Order

The regular agricultural job order is the most used type of agricultural job post and can be placed in OhioMeansJobs.com by the employers themselves or by Migrant Outreach Specialists within the MSFW program. Regular job postings are open to all qualified job seekers.
  - B. Agricultural Recruitment System (ARS) Job Order

An agricultural job order that is placed as an ARS job order is done so by the Migrant Seasonal Farm Worker Account Executive. These job orders are requested by employers who are unable to find suitable workers in the local job area and are willing to expand the job search area to the rest of the country before resorting to foreign labor. ARS Jobs are posted to OhioMeansJobs and appear as a regular job order on OhioMeansJobs.com but the Employer name is redacted, and the application process is restricted to the local area for the first 48 hours after posting. This process is built into the functionality of OhioMeansJobs and can only be posted by the MSFW Account Executive after working directly with the employer or Farm Labor Contractor.



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## C. Foreign Labor Certification (FLC)– H-2A

A Foreign Labor Certification FLC (H-2A) job order is used to comply with the United States Department of Labor (USDOL) Foreign Labor Certification Program under the Immigration and Nationality Act of 1952 (INA). Pub. L. 82-414, 8 U.S.C § 1101 et. seq. All H-2A job orders are placed when an employer is seeking to bring foreign workers into the United States for agricultural work. Foreign labor certification can be obtained when it can be demonstrated there are insufficient qualified United States workers available and willing to do the work. H-2A job orders must be immediately posted on OhioMeansJobs.com for 30 days. When H-2A job orders are made available on OhioMeansJobs.com, staff must complete the job order the same as a regular job posting and refer qualified job seekers.

## D. Foreign Labor Certification (FLC)- H2B

An FLC (H-2B) job order is used to comply with the USDOL Foreign Labor Certification Program under the Immigration and Nationality Act of 1952 (INA). Pub. L. 82-414, 8 U.S.C § 1101 et. seq. All H-2B job orders are placed when an employer is seeking to bring foreign workers into the United States for NON-AGRICULTURAL work. Foreign labor certification can be obtained when it can be demonstrated there are insufficient qualified United States workers available and willing to do the work. H-2B job orders are submitted through the online application (Job Order Form).

- Apprenticeship

Apprenticeships are offered by both private employers and union organizations seeking to recruit entry-level candidates or trainees. Apprenticeships combine elements of training and employment and provide job seekers with the opportunity to learn a skilled trade. Apprenticeship sponsors can be a single business or a consortium of businesses. The sponsor can be an industry association, labor-management organization, community college, workforce board or a community-based organization.

- Federal Contractor

The Office of Federal Contract Compliance Programs (OFCCP) administers and enforces the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), which require federal contractors and subcontractors to employ and advance in employment qualified covered veterans.

To implement the affirmative action requirement, VEVRAA and the implementing regulations at 41 C.F.R. Part 60-250 and Part 60-300 issued by OFCCP require federal contractors and subcontractors to list most employment opportunities with the appropriate employment service delivery system. Each employment service delivery system is required to give covered veterans priority in referrals to such openings. Executive and senior management positions, positions to be filled within the contractor's organization, and positions lasting three days or less are exempt from the mandatory job listing requirement. Jobs must be listed with OhioMeansJobs.com to satisfy the requirement to list job openings with the appropriate employment service delivery system.



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- **Internship**  
Internship orders combine elements of regular employment and apprenticeships. Internships are fixed-duration positions that are typically in professional or high-skills professions. When internships are available in OhioMeansJobs.com, complete the job order like a regular job post.
- **Regular**  
The regular job order is the most used type of job post and can be placed in OhioMeansJobs.com by the employers themselves or by OMJCC staff. Regular job postings are open to all qualified job seekers.

Once a job order has been received, OMJCC or partner staff must generate a resume search as soon as practical, preferably within one (1) business day. The resume search is conducted on OhioMeansJobs.com.

In accordance with the veteran's priority of service, the resumes of the qualified veterans must be selected followed by the resumes of qualified, non-veteran job seekers based upon the number of referral openings available.

Job referral is the process by which a registered job seeker is notified and referred to a specific job opening on a job order. OMJCC staff or partner staff will record the referral in the Referral Tab of ARIES. If the job seeker meets the requirements, OMJCC or partner staff will send an e-mail to the job seeker through OhioMeansJobs.com notifying the individual that his or her resume was sent to an employer.

Job placement activities must be recorded in Ohio's designated case management system to collect data on hired job seekers. If a job seeker is hired by the employer because of OMJCC's referral, job placement information must be entered into the Employment Records tab in ARIES.

## **Refusing, Discontinuing, or Limiting Services to an Employer**

OMJCC may refuse or discontinue services to an employer if the employer or the job orders meet any of the conditions for refusal specified in the Types of Unsuitable Job Orders section of this policy, or if the employer refuses to cooperate with OMJCC's requests for job order verification. OMJCC will terminate or refuse services if the employer fails to provide necessary documents or will not accept appropriate modification(s) to a job order despite at least two documented requests.

## **Standards for Job Posting Method**

1. Employer Self-service on OhioMeansJobs.com:
  - Employers with the capacity and willingness to manage their own postings.
  - Employers who routinely submit a high volume of postings or update listings frequently.
  - Employers who have experience with the self-service functionality of OhioMeansJobs.com.
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- Temporary staffing agencies, unless a special arrangement has been made with OMJCC.
  - Job postings that do not meet OMJCC quality or completeness standards.
2. OMJCC Staff-entered Job Orders:
- Employers who request assistance.
  - Employers with specialized recruitment needs requiring additional OMJCC services.
  - Job orders that are part of targeted recruitment efforts, career fairs, or workforce programs coordinated by OMJCC.

## Standards for Multiple Openings per Job Order

OMJCC staff may list multiple job openings within a single job order if all the following conditions are met:

- The openings are for the same job title and duties.
- The minimum qualifications, wages, schedule, and location are identical.
- The number of openings is clearly specified in the job order.
- The employer agrees to this method of listing.

If the positions vary in any of the above aspects, separate job orders should be created to ensure accuracy and clarity for job seekers.

## Quality of Job Orders

OMJCC's standards for the quality of job orders obtained and processed include the following:

- The job order is legal and allowable under the law, regulations or policies governing labor exchange activities.
- The job order has complete and accurate data including location of the employer, how to contact the employer, O-Net code, hours, and duration of the job.
- The job order contains sufficient information for job matching including job title, required skills, secondary skills, pay information, and a description of duties.
- The job order contains a job description that can be viewed and understood by the job seeker.
- The resume search folder in OhioMeansJobs.com contains documentation of the qualified veterans identified in the resume search and referred to the employer.
- The resume search folder in OhioMeansJobs.com contains documentation of regular follow-up contacts with the employer including referral verification contacts.
- The resume search folder contains timely results of referrals.

Exceptions to this policy may be made at the discretion of OMJCC supervisory staff based on unique employer needs, strategic partnerships, or workforce initiatives.