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STATE INSTRUCTION NUMBER 19-02

To: Local Workforce Area Signatory Officials
Local Workforce Area Board Chairs
Local Workforce Area Administrators
DEW Area Directors
DEW Regional Managers

Subject: Managing Job Orders in SCWOS

Issuance Date: July 3, 2019

Effective Date: Immediately

Purpose: To provide guidance on managing job orders in SC Works Online Services (SCWOS). This policy rescinds State Instruction 13-01 and 13-01, Change 1.

Background: The Wagner-Peyser Act of 1933 (WP) established a nationwide system of public employment offices known as the Employment Service (ES). Federal regulations require each state to administer a labor exchange system that assists job candidates in finding employment, assists employers in filling jobs, facilitates the match between job candidates and employers, and participates in a system for clearing labor among the states. The SC Department of Employment and Workforce (DEW) uses SCWOS to fulfill this responsibility.

Policy: The role of the SC Works system is to deliver high quality services to job seeker and business customers that improve the employment outcomes for both groups. Maintaining quality job orders in SCWOS is a key step in meeting the hiring needs of employers and finding suitable employment opportunities for job seekers.

A **job order** is an online record of an employer's requirement for filling a vacant position. Job orders must contain the qualifications that a worker must have to successfully perform a job, any specific hiring requirements, and referral instructions. A job order **must not contain** any of the following:

- Wording that is sexually explicit, obscene, libelous, defamatory, threatening, harassing, abusive, or hateful
- Wording that is embarrassing or offensive to another person or entity
- Request for personal services implying or requiring sexual or any other illegal activity
- Discriminatory language

Additionally, staff **must remove** job orders that do any of the following:

- Contains discriminatory specifications that would exclude applicants based on race, color, religion, national origin, sex, or age
- Seeks to fill a position involved in a labor dispute
- Requires a job seeker to pay a fee to be referred to an employer
- Requires a monetary investment by the job seeker
- Requires the applicant to attend unpaid training
- Indicates that the job seeker will not be paid according to the state's minimum wage laws
- Indicates the job seeker will not receive overtime pay for working over 40 hours in any week, unless the position is considered exempt
- Requires/refuses labor organization membership
- Pre-designates a list of job candidates that the employer will consider to the exclusion of other qualified job seekers
- Exists when there is no immediate vacancy
- Requires the job seeker to perform an illegal activity
- Asks job seekers to report to an address that is not a normal place of business, such as a hotel or motel room
- Contains explicit sexual or vulgar language

Note: Job orders for independent contractors are not allowed in SCWOS. Independent contractors receive IRS form 1099, rather than IRS form W-2, and are generally considered to be self-employed. Organizations submitting these job orders are not employers for the purposes of the SC Works system and are not eligible for services to employers.

DEW will refuse or remove job orders that are in conflict with any federal or state laws, regulations, and guidance.

Equal Employment Opportunities

Employers must provide equal employment opportunities without regard to race, color, religion, gender, age, national origin, or disabilities in compliance with federal and state laws and amendments including the Immigration and Nationality Act of 1952 (INA), the Equal Pay

Act of 1963 (EPA), the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination in Employment Act of 1967 (ADEA), the Rehabilitation Act of 1973 (Rehab Act), the Vietnam Era Veterans Readjustment Act of 1974 (VEVRAA), the Pregnancy Discrimination Act of 1978, the Bankruptcy Reform Act of 1978, the Immigration Reform and Control Act of 1986, the Americans with Disabilities Act of 1990 (ADA), the ADA Amendments Act of 2008 (ADAAA), and the Genetic Information Nondiscrimination Act of 2008 (GINA).

Labor Disputes

During a labor dispute, such as a strike or employee lockout, no job order will be accepted and no job referral will be made directly or indirectly to fill a job opening that is at issue in the labor dispute. Staff must not accept or work existing job orders from temporary staffing companies or staff leasing companies for positions at issue in a labor dispute. SCWOS may not be used as a service to recruit replacement workers in a labor dispute.

Fees for Consideration

The Wagner-Peyser Act and associated regulations prohibit DEW from accepting job orders for positions for which the individual must pay an employer:

- A fee in order to be considered for employment (i.e., an agency or employer fee);
- A fee for employer-provided training in order to be considered for employment (i.e., training fee); or
- A fee to invest in materials, goods, services or equipment and/or to go into business (e.g., franchise fees, licensing fees, purchase of Direct Selling “kits”), and/or any similar arrangement that requires an individual to pay the advertising employer or third-party acting on behalf of the employer.

If a job seeker, responding to a job order, reports to DEW staff that the employer has asked for money or payment of any type of fee similar to the fees/payments described above, DEW will cease referrals and will not display the job order while investigating the matter.

Union or Non-Union Specifications

DEW does not accept job orders with language that conflicts with the South Carolina Right to Work law (S.C. Code Ann. § 41-7-10 *et seq.*), to include denial of job orders that require/refuse labor organization membership in order to be considered for employment.

Submission of Job Orders

Employers may enter job orders at any time after creating a Recruiting Account; however, **the account must be verified and fully enabled before job orders display to the public.** Employers or staff, at the employer's request, may enter job orders; however, staff must verify that the individual requesting the job order is a representative of the employer with authority to recruit on behalf of the employer.

Review of Job Orders

The review of an employer-posted job order in SCWOS is conducted by Business Consultants to identify deficiencies and ensure the employer and jobseeker can be matched appropriately. It is the responsibility of Business Consultants to correct orders that do not follow the SCWOS standards for job orders. Requirements for the job must be clearly stated and the process of applying must be clearly defined. State level staff monitor job orders marked as "reviewed" by local staff for consistency in ensuring guidelines are followed as directed. Staff must review job orders on enabled accounts within two business days of receipt of the job order. As part of this review process, staff must complete each of the following steps:

1. Verify that the employer has an enabled account.
2. Review the job order for clarity and completeness.
3. Make minor technical adjustments or edits needed for the job order to display properly.
4. Contact the employer to review the recruitment plan and to review any changes to the job order necessary to conform to federal and state laws, regulations, and guidance.
5. Match the job order against qualified veterans in SCWOS and notify qualified veterans about the job order.
6. Match the job order against qualified general public individuals in SCWOS and notify qualified individuals about the job order.
7. Refer qualified candidates per the employer's instructions in the job order.

Note: DEW uses a variety of means to refer qualified candidates to job orders posted by employers. DEW does not have access to criminal history records. Reviews of candidates' backgrounds are limited to work and educational history only. DEW does not conduct any further investigations, such as criminal background checks, before referring a candidate.

Private/Temporary Employment Agencies

Staff may refer job seekers to private employment agencies. However, staff must advise job seekers who are referred to these job orders, including UI claimants, that the positions are being filled through a staffing company. Staff must ensure that job orders from staffing companies are accepted only if the staffing company:

- is a valid and verified employer;
- has a current and available job vacancy with the client/employer; and
- does not charge the job seeker a fee to secure or keep the job.

Posting a Job Order

New job orders display only to veterans before becoming available to non-veterans. All job orders are placed in a "Veteran Hold" status the day of the job order posting to allow qualified veterans and other covered persons the exclusive opportunity to view and receive a referral prior to non-veterans. In SCWOS, veteran holds are released during overnight processing on Monday – Friday. *Overnight processing does not run on national holidays.* The job order will be opened to the general public after the veteran holding period has expired.

Example: A job order is entered Wednesday at 6:00AM. The "Veteran Hold" will be lifted at 12:01AM Friday during overnight processing and the job order becomes visible to the general public. The "Vet Hold" was in place for at least 24 hours and over the course of one full business day.

The default setting for displaying job orders is 90 days. Employers may adjust the job order display time if desired. However, employers who are posting jobs for Foreign Labor Certification visas are required to recruit for the specified times outlined by the U.S. Department of Labor. Program requirements, summarized below, are subject to change, and exemptions may apply in certain cases. For additional information, see: <https://foreignlaborcert.doleta.gov/>.

Permanent and H1B Specialty Workers	H-2A Agricultural Guest Worker Program	H-2B Non-agricultural Guest Worker Program
Post/recruit for 30 consecutive days	Post/recruit for half of the contract period	Post/recruit for 10 consecutive days

Note: Job orders submitted to meet Foreign Labor Certification requirements are reviewed by state-level staff who specialize in Foreign Labor Certification requirements.

Action: Please ensure that appropriate staff receive and understand this policy.

Inquiries: Questions may be directed to Policies and Procedures at PolnPro@dew.sc.gov.



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