Job Order Policies and Procedures
Revised July 2008

Department of Workforce Development, Division of Employment and Training, Bureau of Job Service

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Preface

This policy document takes effect immediately and is in effect until further notice.

This policy document replaces previous Job Order Policy and Procedures documents.

For assistance in answering questions, refer to the Contact Information in Section C of this document.

Introduction

This document provides direction on JobNet Business job order policies and procedures. Use this document as the first source of technical assistance when questions arise regarding official policy or procedures regarding JobNet job orders. If this document does not answer a job order related question, consult the Job Order Policy Contact listed in Section C of this document.

The JobNet system, built and maintained by DET, is the cornerstone of the labor exchange system in Wisconsin. It is important that accurate job orders are listed on JobNet so job seekers and employers are connected in a proper and timely fashion. The quality of job orders is especially important now, given our self-service system and the high number of job seekers who use the Internet.

Job seekers and employers must trust the information found on JobNet. If not, job seekers will resort to other methods of finding employment and employers will go elsewhere to recruit qualified applicants for their job openings. To ensure job order integrity, all job orders will be reviewed by the Wisconsin JobNet Call Center staff using the Job Order Quality Assurance Program guidelines. Job orders will be verified for accuracy, honesty and compliance with this policy document, quality guidelines, and appropriate labor laws. A quality job order will provide complete, accurate and factual information about the job. It will be written so that the general public can understand the job. JobNet is a government web site and must be held to the highest standards.

All job orders must:

- Clearly and accurately represent the employment situation.
- Comply with appropriate laws and represent an actual job opening.
- Be currently available for application.
- Be processed as soon as possible.
- Meet DET quality and policy standards.
- Be verified to ensure that a vacancy still exists. Local resources will dictate specific procedures on job order follow up.

Job order services will be provided to all bona fide employers engaging in legal business. Job orders that do not comply with this policy will be denied service.

The policies and procedures contained in this document are the job order policies and procedures of the Department of Workforce Development's Division of Employment and Training.

Job Order Actions Required

Job Service District Directors will work with Workforce Development Board Directors to ensure that:

- All Job Center partner agencies shall be made aware of this policy document.
- All Job Center partner agencies involved in writing and servicing job orders will provide this policy document to their staff.
- All local Job Center partners shall abide by these policies and procedures.

The following job order policies and procedures are divided into three sections:

Section A. Job Order Entry Policies and Procedures. This includes policies and procedures that may unfold as a job order is being processed.

Section B. Other Job Order Issues. This includes issues regarding job orders that might occur during the job order process. Some issues in this section are reasons to not accept a job order.

Section C. Appendix. This includes other resources, the process for policy and procedure issue resolution, a list of Central Office contacts, reference lists and an index to this policy document (by topical area).

Section A. Job Order Entry Policies and Procedures

A1. Abbreviations

Abbreviations and technical jargon should be discouraged and not used unless necessary. They may only be used when information is specific to an occupation or when specific requirements are necessary. Common industry or occupational abbreviations should be used (e.g., driver's license requirements such as "HAZMAT CDL," computer languages such as "HTML," etc.). Whenever possible, use abbreviations and words that are commonly understood by the general public.

A2. Affirmative Action Employer

Affirmative Action employers are required to hire new employees to remedy past actions. An Affirmative Action employer seeks applicants who are members of a specified group, which for some reason of past custom, historical practice or other non-occupationally valid purpose have been discouraged from entering certain occupational fields.

Most employers will know if they are Affirmative Action employers.

Listing a job with Job Service only does not satisfy an Affirmative Action directive from the U.S. Equal Employment Opportunity Commission (EEOC). The employer should refer to their Affirmative Action Plan for more information.

References:
Office of Federal Contract Compliance Programs (OFCCP) http://www.dol.gov/esa/ofccp
Executive Order 11246 http://www.dol.gov/esa/regs/compliance/ofccp/ca_11246.htm
VETS 100 Report https://vets100.vets.dol.gov/vets100login.htm

A3. Apprenticeship

Apprenticeship opportunities combine elements of both jobs and training. Its key component is paid work, although closely supervised and combined with various training activities, and it typically results in high quality skilled jobs for trainees. This provides important access for our job seeker customers to the skilled trades. It also broadens the number and kinds of applicants who may apply for the training to the benefit of both apprenticeship committees and employers.

Apprenticeship opportunities provided by local apprenticeship committees will be treated as job openings and should be placed on JobNet. In some cases, the final employer of an apprentice may not be known at the time the opening is announced, so the local apprenticeship committee is identified as the employer on these job orders. Note that this is an exception to the policy requiring job orders to have actual job openings and applies only to apprentices sponsored by State of Wisconsin-recognized apprenticeship committees. This exception should not be applied to other training situations.

Job orders meeting the definition of this section should answer "yes" to the "Is this an Apprenticeship position?" question on the Details Tab. An Apprenticeship icon will appear next to the listing in JobNet identifying the opening to job seekers as an Apprenticeship position.

A4. Casual Employment, Day Labor, and On-Call Employment

Casual employment and day labor are short-term jobs that occur on an irregular or intermittent basis for a business.

Example: A trucking company needs help unloading a semi-truck.

Job orders from a business or an individual engaged in a business activity which requests short-term labor may be accepted.

On-Call Employment is employment that does not guarantee any work hours in a pay period. The employer contacts the employee when there is work available. The employee

only works for the employer when the employer contacts him or her. Minimum work hours in a pay period can be as low as zero.

Example: A nurse who only works when the employer informs him or her of an open shift.

Job Orders for On-Call Employment may be accepted. If you enter a job order for an On-Call position you must indicate the minimum hours as zero and you must choose the "Casual/On-Call" option on the workweek drop down menu. This will generate an automatic mandatory statement:

"This position is an on-call position and can not guarantee that any work hours will be made available in a given pay period to the employee."

Casual Employment, Day Labor, and On-Call Employment job orders must meet the same minimum requirements as any other job order. The employment must meet applicable state and federal laws.

References:
Wisconsin Administrative Code, Chapter 272
Wisconsin Minimum Wage Guide, ERD-39-P

A5. Coding Job Orders by Duration and Occupational Group

Job orders should be coded using the appropriate occupational code or codes. When coding a job order consider the situation, the type of work, the O*Net code, and how best to connect the employer and the job seeker.

Part-time jobs should be assigned a part-time code (711 – Part-time Service, 712 – Part-time Sales, or 713 – Other part-time). Temporary jobs of less than 150 days duration should be assigned code 723 – Other Temporary Jobs. Jobs with a specific end date or that logically are seasonal should be assigned code 722 – Seasonal Jobs. **In addition, these job orders should also be assigned an occupational code to maximize qualified job seeker responses to the job order.**

References:
JobNet Business Staff Manual
http://dwd.wisconsin.gov/jobnetbusiness/manual/staff/index.pdf

A6. Compensation Methods (Commission, Performance-based, Incentive, and Piecework Jobs)

State law requires that all employees be paid at least minimum wage for all covered employment regardless of the method of compensation. A job order should clearly state the method of compensation: salary, salary plus commission, straight commission (also known as commission only), performance-based, incentive, or piecework. To be listed on JobNet, all job orders must provide total compensation of at least the minimum wage for any hours

worked or spent in required training. Federal, state, and local-municipal laws and ordinances apply. Apply the higher or most stringent law when there is a conflict. **Jobs that pay straight commission cannot be included if they only pay when a product is sold, and do not guarantee the worker at least a minimum wage for the hours worked.** Employers should be informed at the time of listing that the minimum wage law applies. Employer acceptance of the compensation mandatory statement satisfies the minimum wage guarantee for accepting a job order.

Example: When an insurance sales representative is paid a straight commission, the job order cannot be listed on JobNet unless it guarantees at least minimum wage for hours worked or spent in required training. Only jobs that guarantee at least minimum wage for hours worked or spent in required training can be listed on JobNet.

Occasionally an employer provides a draw against future commission to cover wages until the employee begins to earn commission. If a draw against commission is received, the job can only be listed on JobNet if the employer guarantees the draw will at least provide minimum wage for the hours worked or spent in required training. A draw is usually paid back to the employer by being subtracted from future commissions. If the employee is no longer employed by the employer prior to paying this draw back, the employer must accept the loss.

The following Mandatory Statement must be checked on the Pay and Benefits Tab for commission job orders:

"All methods of compensation must guarantee at least minimum wage as required by Federal and Wisconsin law."

Current wage rates can be found at:
http://dwdwisconsin.gov/er/labor_standards_bureau/minimum_wage.htm

References:
Wisconsin Statute, Chapter 104, Minimum Wage
Wisconsin Administrative Rules, Chapter 272, Minimum Wage

A7. Site Company Description

Quality job orders should include factual information about the company, their products or services, and available advancement opportunities. It should not contain misleading or overly optimistic statements. Order taking staff should work with employers to ensure that the Site Company Descriptions are worded honestly and clearly.

A8. Domestic Service Employment

"Domestic service employment" means all services related to the care of persons or maintenance of a private household. Some examples include butlers, housekeepers,

gardeners, nannies, cooks, shoveling snow, raking leaves, babysitting, mowing lawns, or other odd jobs.

Job orders for domestic service openings are acceptable as long as they meet the requirements stated in this policy document. In addition, they must meet applicable state and federal laws. Staff should also advise the private individual that the Job Center does not screen applicants or do background checks.

A9. Employer Name

In order to obtain accurate information for reporting and system management, employers must be accurately identified. For the benefit of job applicants, the name that appears on the job order should be the commonly recognized name of the local work site.

JobNet Business (formerly Wisconsin Job Order System) requires the use of the correct employer name and work site location. Staff must maintain the accuracy of this information in the database, including appropriate employer name, Unemployment Insurance account number and work site locations.

Note: If the name on the employer record in the JobNet Business database has changed, or doesn't accurately reflect what the business is known as locally, staff should update the employer record as follows:

Leave the Profile Legal Name alone - DO NOT CHANGE
Update the Profile Trade Name to what the business is known as locally
Update the Site Trade Name to what the business is known as locally

References:
JobNet Business Staff Manual
http://dwd.wisconsin.gov/jobnetbusiness/manual/staff/index.pdf

A10. Federal Contractors and Subcontractors

Any business with a federal contract or subcontract (including private employment agencies providing staff) of $100,000 or more must take Affirmative Action to hire and promote qualified special disabled veterans, veterans of the Vietnam era and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Contractors and subcontractors are required to list all employment openings with their local state employment security agency except for executive or top management jobs, positions filled from within the organization, and jobs lasting 3 days or less. The Wisconsin Job Service Bureau encourages employers to list their openings with the local Job Centers. Companies must still actively search out these veteran groups to interview for their openings. Veteran's service staff can assist the employer by file searching and referring qualified veterans.

The Job Service Bureau maintains a web site that lists the federal contractors and subcontractors in Wisconsin. The current list of federal contractors and subcontractors can be found at: http://dwd.wisconsin.gov/veterans/contractors_list.htm
The web site was created as a working tool for all job order writing staff. Staff must regularly refer to this site to identify all federal contractors and subcontractors. When federal contractors and subcontractors are identified, staff must indicate this on the employer's Profile record by checking "yes" to answer the Federal Contractor question. The federal contractor information cascades down to all sites for that employer, and to all job orders entered for any of the employer's sites. Local Veteran Employment Representatives (LVERs) and Department of Labor Veterans Employment and Training Service staff will be monitoring job orders to ensure that the orders are being identified correctly.

References:
Office of Federal Contract Compliance Programs (OFCCP) http://www.dol.gov/esa/ofccp
Executive Order 11246 establishes affirmative action in Federal contracting
http://www.dol.gov/esa/regs/compliance/ofccp/ca_11246.htm

A11. Job Order Fax Form DETB-8926, Mandatory Use

In cases where an employer cannot use online direct order entry, staff must use the Job Order Fax Form DETB-8926 (revised 07/2008) to collect information from the employer. This form has been standardized for use in Wisconsin and designed to collect all the information needed to write a complete and comprehensive job order. For ease of data entry, the format of DETB-8926 is similar to the format of JobNet Business.

The Job Order Fax Form is available on the DWD Workweb under DWD Internal Forms. The form is no longer customizable.

Access DETB-8926.

A12. Job Titles

Job titles should be commonly accepted names of occupations. In situations where the employer's job title is not clear to the general public, job order staff should encourage the employer to clarify it. Explain to the employer that a misleading job title may result in recruitment of the wrong candidates. Reference O*Net for suggestions of more appropriate or commonly used titles. If the employer is not willing to change the job title, suggest placing the more commonly used job title in the Job Title field and place the employer's job title in the Job Duties & Responsibilities text field or the Additional Application Instructions text field. Explain that it is also important that job titles be commonly recognized for key word searches and resume search functions to work effectively for job seekers.

Job orders should have only one job title. Separate job orders should be posted for different job titles. Using more than one job title on a job order causes confusion and produces

inaccurate search results. Job orders with one job title may continue to have multiple openings.

When the job title is not related to the job duties, coding must reflect the job duties, not the title. Clarification should again be sought from the employer to ensure that the proper O*Net and JobNet Occupational codes are assigned. Reference O*Net for suggestions of more appropriate or commonly used job titles and/or job duties.
When a job title is too long to fit into the Job Title field on the job order, logically abbreviate one or more words so the job title fits into the field. List the entire job title in the Duties and Responsibilities field of the job order.

Reference:
Occupational Information Network (O*NET): http://online.onetcenter.org
Job Order Quality Assurance Program
http://dwdworkweb/det/employer_services/jo_quality_assurance/ or for partners using the Extranet http://workweb.dwd.state.wi.us/det/employer_services/jo_quality_assurance/.

A13. Location of Work Site

The location of the work site must be in Wisconsin or in a bordering county in Illinois, Iowa, Michigan or Minnesota. As long as the work site is located in Wisconsin or a bordering county, the employer itself does not have to be similarly situated. Employers with positions located elsewhere should be referred to their state's employment security agency or to JobCentral.

References:
JobNet Business Staff Manual
http://dwd.wisconsin.gov/jobnetbusiness/manual/staff/index.pdf

A14. Military Recruitment

The military services are legitimate employers and we apply the same rules to them as any other employer as described below. The exception is the military mandatory statement. This protects the public from incomplete and misleading job advertisements.

Only military jobs with work sites in Wisconsin should be accepted. The majority of these positions will be in the Reserves or the National Guard. Typically active duty recruitments involve leaving Wisconsin with no intention to return to a duty station within the state. National Guard and Reserve recruitments DO typically involve returning to Wisconsin. The duty assignment is to a local armory or reserve center. Even though the individual may leave for training, or they may be called to active duty at a later date, the normal and intended work site is local. Therefore, these job orders are acceptable.

The National Guard and Reserves do have active duty personnel who are assigned locally. They are called Active Guard and Reserve (AGR). It is possible, although unlikely, that you may receive a request to recruit for these positions. Usually these positions are filled

internally from members of the local military unit. These positions are acceptable, even though they are active duty, because the duty station or worksite is in Wisconsin.

Another possibility is a request to recruit for a Reserve Technician. These positions are federal civil service jobs that have membership in a National Guard or Reserve unit as a condition of employment. The individual may work at an armory or reserve center (or at a military base like Fort McCoy). They wear the military uniform at work. They typically work at the same facility as their military unit. But, they are not active duty military personnel. These jobs are acceptable as a job order. Because they do require enlistment in a guard or reserve unit, the military mandatory statement should be used.

A separate job order must be written for each job classification.

Applicants should be informed that military job requirements include passing a rigorous physical exam, enlisting in the military and that applicants must be between the ages of 17 and 35. The nature and conditions of the work should be explained in the job order. The hours, days of work, travel requirements, out-of-state training requirements, physical demands, etc., should be clearly stated. This does not have to be lengthy, but it should leave no doubt about the employment situation.

All military job orders must have the following Mandatory Statement checked on the Description Tab:

"This position requires enlistment in the Armed Forces of the United States."

Several other issues need to be kept in mind when processing military orders.

Each job order should be for a specific occupation or group of closely related occupations. There should be a real opening (most military units always have openings so this is not usually a problem).
Typical Guard or Reserve members are part-time employees. They should be coded part time unless it is an AGR or Reserve Technician situation (we also code all job orders by occupation).
The O*NET and OGA codes should reflect the occupation and duties of the job. If they are looking for truck mechanics, for example, the O*NET code would be for mechanics and not a military code (even though the worker will be doing military duties). O*NET does have codes for occupations unique to the military services (Artillery and Missile Crew Members, Infantry, etc.).
Job Orders should be coded geographically by where the worksite (i.e, the armory or reserve center) is located. Although reservists typically do travel to their assigned units from outside the local area, we should not post these orders in multiple counties for purposes of recruiting. Units that have more than one location can include all those counties on one job order. In other words, we treat the military job orders the same as non-military job orders. Worksite locations should not be manipulated purely to increase the recruiting area. **See A20. Work Site vs. Recruitment Area.**

Veteran staff have no special responsibilities with military job orders. Reservists are NOT necessarily veterans. National Guard or Reserve service by itself does not bestow veteran's status for VA benefits.
Recruiters are typically assigned to a specific military unit. They receive the "applications" and process the job seekers. In most cases it will be more appropriate for local Job Centers to have the job order responsibility rather than one job center creating job orders statewide.

A15. Negotiable Wages

Staff should always encourage employers to list at least the minimum wage they are willing to pay, even when the maximum starting pay is "negotiable". This will save time and effort for both the employer and the job seeker if the wage is not acceptable to the job seeker. When a wage is only listed as "negotiable", it may be interpreted by job seekers as having low-paying or substandard wages.

When a job order lists the wage as "negotiable", it is recommended that staff contact the employer to encourage them to include more specific wage information.

Research using JobNet Business data has shown that job orders with pay information receive about twice as many "hits" as job orders without pay information. To attract the most applicants and obtain better results, employers should provide compensation information on the job order.

A16. Private Employment Agencies (including Temporary, Direct Hire and PEO)

Private employment agencies may be referred to by a number of terms such as temp agencies, temporary agencies, staffing services or placement services. Occasionally a non-employment agency-type business will perform employment agency functions (such as recruiting) and should be treated like an employment agency in those instances. Job order staff need to understand the nature of the service being offered by the private employment agency, rather than depending upon the name assigned to the service or the agency, when making decisions related to listing these openings.

Professional Employer Organizations (PEOs) that **contractually** assume and manage human resources and personnel responsibilities by establishing, maintaining, and **sharing** an employer/employee relationship with a work site company are subject to this policy.

Private employment agencies are employers and have a right to list their job vacancies on JobNet. When they are recruiting employees who will be on their payroll while performing work for another employer, the private employment agency is the legal employer of record. Employees are issued W-2 tax statements by the private employment agency at the end of the year or term of employment, whichever comes first.

Job orders can be accepted from private agencies and handled as any other job order. **Efforts should be made to ensure that there is an actual job vacancy** and that the

recruitment adheres to the policies and procedures relating to labor disputes, federal contractors, independent contractors, etc.

All job orders (temporary, direct hire, PEO, hiring for their own staff) can be entered on JobNet Business by private employment agency staff. All job orders must be attached to the private employment agency's record. No job orders will be attached to the work site employer's record.

Staff must:

- Fully and accurately describe the situation on the job order. For example, is this a direct hire, temporary, or PEO situation? Will the person hired be working at one location, multiple locations, or will the situation change from day to day or week to week?
- Obtain the name of the work site employer and enter that information in the "Staff Comments" field in JobNet Business. **The name of the work site employer must not be shared with job seekers**.
- Indicate "yes" to the question "Is this job order a recruitment for an employer by a Staffing Agency?" on the Job Order Management tab of the job order, in order to activate the "EA" (Employment Agency) icon on JobNet, and
- Check the Private Employment Agency Mandatory Statement on the Job Order Management tab of the job order.

A job order should not be placed in "On JobNet" status until all conditions listed above are met.

The above statements do not apply to situations where the private employment agency is recruiting for their own employees. Examples would be hiring a receptionist for their office, or hiring a recruiter.

Reference:

Chapter 105 Wisconsin Statutes: Employment Agents.

A17. Suppressed Job Orders

A suppressed job order does not have the name, address, or any other identifying information about the employer displayed to the public. Suppressing a job order protects legitimate employer needs for confidentiality. Examples: an employer is recruiting to replace an existing employee and doesn't want the employee to know; or a private household is looking for someone to care for an elderly person or small child in the home.

Suppressing job orders should be used judiciously, as it is counter productive to the effectiveness of a self-service system. Some job seekers may avoid applying when the employer name is not listed.

Suppressed job orders should contain specific information concerning the method for applying in the Application Instructions field, including names, addresses, or phone numbers, as appropriate.

Staff should treat suppressed job orders with care so as not to reveal the name of the employer nor any other identifying information to job seekers.

Data contained in the JobNet Business database shall not be manipulated nor altered to protect the employer's identity. Specific instructions for entering suppressed job orders in JobNet Business are found in the JobNet Business Systems Manual.

A18. Tipped Occupations

Wisconsin state law requires that all employees be paid at least minimum wage for all covered employment regardless of the method of compensation.

Tipped occupations have a special minimum wage. State law requires that TOTAL compensation (wages PLUS tips) be equal to or exceed the general minimum wage. The employer is responsible to make up the difference in the absence of adequate tip compensation.

Examples: Waiters, waitresses, bell hops, taxi cab drivers, barbers, or cosmetologists.

The following Mandatory Statement must be checked on the Pay and Benefits Tab for job orders for waitpersons and other tipped compensation employees.

"Compensation for tipped occupations must, on average – including both the hourly wage and tips – equal or exceed the general minimum wage."

Current wage rates can be found at:
http://dwd.wisconsin.gov/er/labor_standards_bureau/minimum_wage.htm

Reference:
Chapter 104 Wisconsin Statutes

A19. Veteran's Priority

Veteran's priority is mandated on all job orders. Federal law requires that veterans receive "priority" in job referrals. This means that all qualified veterans have an opportunity to view the job opening before non-veterans. To accomplish this, a 24-hour hold is placed on each job order. Registered veterans using JobNet 3.0, whether in a Job Center or on the Internet, can see jobs on Veteran's Hold. Internet JobNet 2.0 users and non-veterans are not able to see these jobs while they are on veteran's hold.

Veteran service staff can extend the hold beyond the 24-hour period, if deemed necessary, to satisfy the veteran's priority law. Veteran service staff have also been instructed to "file

search" good paying job orders in addition to the 24-hour hold. This helps to ensure maximum veteran's priority.

A20. Work Site vs. Recruitment Area

Jobs should only be listed in the county or counties where the work will be performed. Do not confuse the work site (location of the work) with "recruitment area." Employers interested in recruitment outside the work site location should be reminded that job seekers can search for jobs statewide, or in other counties, if they are interested in relocation or commuting.

There may be situations where it is appropriate to list a job in multiple work sites. Examples are:

Territorial sales or management positions where there is no set location.
Positions where there is no required or defined work site location.
Positions where the work site (city) is located in two or more counties (for example, Appleton, Wisconsin Dells, Watertown, Waupun, etc.).

References:
JobNet Business Staff Manual
http://dwd.wisconsin.gov/jobnetbusiness/manual/staff/index.pdf

A21. Native American Sovereignty and Job Orders

Native American tribes are sovereign nations as established by treaties and federal law. This generally means that state labor and employment related laws, and the authority of state regulatory agencies, do not apply to tribal entities or businesses located on tribally owned lands.

Federal labor laws do apply in principle, but federal regulatory agencies generally do not have jurisdiction. Most federal employment compliance laws such as the Americans with Disabilities Act, etc. are incorporated into tribal constitutions. Therefore, employees of tribal businesses or businesses located on tribally owned lands have similar protections as provided by federal law. The enforcement and complaint processes may, however, be different. The tribal courts or tribal governments may be the only enforcement remedy when someone has a complaint.

This is a simplified description of the legal relationships. There are exceptions and conditional situations. For example:

Unemployment Insurance does apply and is provided by DWD's Unemployment Insurance Division.
Tribal entities can voluntarily participate in the state Worker's Compensation program.

Job orders placed by Native American tribal businesses or located on

tribally owned lands are not required to meet Wisconsin employment law. Job order wording contrary to state law, but acceptable under federal law, will be acceptable as a legal job order.

For example, state law prohibits discrimination based on the use, or non-use, of legal products. Discriminatory statements regarding smoking (a legal product) that would be otherwise rejected are acceptable on a Native American job order because state law does not apply. Similarly, if Wisconsin raises the minimum wage, we could accept Native American job orders paying a different wage as long as it meets the federal wage standards.

Native American tribes can give preference to the hiring of tribal members and other Native Americans. Seemingly discriminatory language regarding Indian employment preference by tribally owned businesses is acceptable on a Native American job order. This is because the Indian Reorganization Act, enacted by Congress in 1934 and amended by several court cases and congressional legislation, allows for Native American preference in certain circumstances including when the business is tribally owned. Therefore, state laws on non-discrimination in hiring do not apply because they would conflict with Federal laws governing Native American employment preference.

If Tribes choose to include a preference statement in their job openings, the following language should be used in addition to the statement of preference:

"Because this position is subject to sovereign tribal authority, Native Americans may receive hiring preference, as granted by the Wheeler-Howard Act of 1934, and re-affirmed by the Supreme Court."

If Tribes choose to participate in a state system, more often than not, the rules under that program DO apply to Tribes. Therefore**, DET Job Order Policy and Procedures will be followed. Staff can expect compliance with policy and procedures that do not relate to Native American sovereignty if a tribal business chooses to use DET systems.** For example, all job orders must represent an actual job opening, represent an employer-employee relationship, and not charge the applicant a fee.

Job orders may be declined or discontinuation of service initiated, when justified, as with any other employer.

To ensure the public is fully informed of the employment situation, the following Mandatory Statement must be checked on the Description Tab of the job order:

"This job is with a Native American tribal business or is located on tribally owned lands. Laws governing employment may differ from the State of Wisconsin's. You may wish to discuss this with the employer before accepting the position."

Native American tribes can legally place Native American preference statements in job orders as explained briefly above.

See the Job Order Policy Memo "Preference Language in Job Orders", dated October 13, 2004.

A22. Job Order Quality Assurance Program

All job orders will be reviewed using the standards and guidelines provided by the Job Order Quality Assurance Program. Staff will review all job orders prior to completion. Supervisors will establish local procedures for timely review of completed job orders.

See Job Order Memo "Job Order Quality Assurance Program: Statewide Implementation", dated December 6, 2004.

Reference:
JOQA web pages http://dwdworkweb/det/employer_services/jo_quality_assurance/.
JOQA Plan http://dwdworkweb/det/employer_services/jo_quality_assurance/qa_plan.htm

A23. Intra- and Inter-State Clearance Job Orders

Intra- and Inter-State Clearance Orders must be accepted for posting on JobNet. The recruitment area for these orders is determined by the Department of Labor and will extend beyond the work site area. The recruitment area may include all of the state of Wisconsin and perhaps recruitment in other states.

Initially the employer will place a regular job order to recruit locally. If labor needs are not met through the local job order, staff should inform the employer of the option to recruit more broadly by placing an Intra- or Inter-State Clearance Order. If the employer is interested, staff will contact the Monitor Advocate located in the Central Office for further guidance. Local staff will continue to assist the Monitor Advocate in all stages of this process.

The employer will assist the Monitor Advocate in the preparation of the Agricultural and Food Processing Clearance Order (ETA Form 790) and all necessary supplemental information. If the employer is seeking recruitment outside the state, the employer must prove that there is a shortage of the required labor in-state. All regulatory assurances must be included as part of the Clearance Order. If housing has already been inspected and approved, the approval should accompany the Order.

The Order is then submitted to the U.S. Department of Labor, Employment and Training Administration (ETA), Region V, for review. The Region V office will approve or deny the Order within 10 business days. If approved, the Regional V office determines the geographical area to extend the recruitment area, meaning whether the Order with be Intra- or Inter-State.

Once notification of approval has been received, the Clearance Order and all attachments are sent electronically directly to America's Job Exchange (AJE) http://www.americasjobexchange.com/.

The Department of Workforce Development (DWD) will continue to be responsible for overseeing and conducting on-site field checks of job sites where agricultural workers have been placed, responding to any work-related complaints from the worker(s), providing outreach, and explaining available services to workers and local staff. Modifications of a Clearance Order can be made if there is a change in crop or market conditions that affect the time for which labor is needed.
A mandatory statement must appear on all Intra- and Inter-State Clearance Orders. The mandatory statement is:

"Neither the ETA nor the State of Wisconsin Job Service are guarantors of the accuracy or truthfulness of the information from the employer. However, if any material misrepresentation is made by the employer, procedures of the Employment Service Complaint System at 20 CFR 658, subpart F apply.

No Clearance Order accepted or recruited upon by the Wisconsin Job Service constitutes a contractual job offer to which the ETA of the Wisconsin Job Service is in any way a party. Both entities only provide employment assistance."

A25. Processing Employer Registrations for JobNet Business Access

Registrations can be accepted from employers who have a job opening with a worksite in Wisconsin, or in a county that borders Wisconsin. See A13. Location of Work Site. Employer registrations appear on the Request for Assistance list in JobNet Business. Registrations should be handled by the office that serves the county where the employer is located. If the employer is located in a county that borders Wisconsin, the Job Center that serves the Wisconsin county that borders the employer's location should process the registration. If the employer is located outside of Wisconsin in a non-bordering county, staff should use their best judgment about which office should process the registration.

Most registrations are straightforward, and the employer registers with the correct office. However, staff should not automatically approve every registration that appears on the Request for Assistance list. Some registrations may need to be moved to another office, may not be for legitimate employers, may be from a job seeker, or may be for companies that don't have a job opening in Wisconsin or a bordering county.

Once an employer's registration is processed and approved, all job orders entered by that person will come to the office that approved the registration, regardless of where in the state the job opening is occurring. This makes things easier for the employer customer because he or she only needs one registration and only needs to work with one Job Center.

Sharing a username and password is not allowed. According to Department of Workforce Development Security rules, each person at the company who needs access to JobNet

Business must have his or her own JobNet Business account. This is for the protection of the employer's information. When a person with access leaves the company, his or her access is deleted.

Please see the "Processing Employer Registrations for JobNet Business Access" document.

Section B. Other Job Order Issues

B1. JobCentral

All job orders, except suppressed orders, are automatically posted on JobCentral. Suppressed orders will be posted to JobCentral without providing the employer's identifying information.

Reference:
JobCentral at http://www.jobcentral.com

B2. Complaints about Job Orders

When a complaint, question, or concern is raised about a job order, the staff person receiving the complaint should always try to address the concern in an honest, accurate, and informative manner. If the complainant is not satisfied with the answer, then he/she should be directed to the next level of management, to the local Job Service Complaint Specialist, or to the local Job Center Complaints Coordinator, depending on local procedure.

Note: The Job Service Bureau has a formal Job Service Complaint System including U.S. Department of Labor complaint forms. Both employers and job seekers can use the complaint system. Each Job Service District has a designated Complaint Specialist available for consultation and assistance.

B3. Continuous Listing and Open Recruitment

A job order must represent a definite, bona fide job opening. Listing continuous job orders, where the employer is continually hiring, is appropriate as long as a bona fide job opening or openings exist. Employers should be cautioned that continuous listings may be less effective and their use should be discouraged. When continuous listings are used, they should be updated frequently. JobNet will default to close job openings after 30 days, although an order may remain open on JobNet for up to 90 days.

Do not accept job orders that will be used solely for the purpose of building résumé or job application files. An employer who is aware of a retirement, expansion, or similar situation and is reasonably certain there will be a bona fide job opening within the next 90 days can list the anticipated opportunity on JobNet. If the employer is not willing to state that they are reasonably certain a job opening will be available within 90 days, the employer must not be allowed to post a job order on JobNet. Instruct the employer to call when they are reasonably certain that there will be an opening within 90 days.

Civil service, county, city, and similar opportunities can be listed on JobNet if the employing unit is reasonably certain of a bona fide job opening within 90 days. If the employing unit is building an eligibility list for an anticipated job opening, the job order should clearly state that in the Job Duties and Responsibilities field.

B4. Discrimination

Job orders that are not in compliance with all applicable state or federal employment laws will not be accepted. This includes all state and federal wage and hour laws, child labor laws, discrimination laws and disability laws.

It is assumed when an employer asks questions or requests certain qualifications of an applicant, that those answers or qualifications are related to the function of the job. If it is not clear what the relationship is between the question or requested qualification and the functions of the job, it is appropriate to question the employer.

When a question arises about the legality of a job order, staff must follow the process for policy and procedures issue resolution that is outlined just after Section B of this document.

Please note: Native American tribal entities or businesses located on tribal lands are not subject to state laws and regulatory agencies. Job orders placed by these businesses do not need to comply with non-applicable state laws. See A21. Native American Sovereignty and Job Orders and policy memo regarding preference language used by tribal entities in job orders entitled "Preference Language in Job Orders", dated October 13, 2004.

B5. Employment Testing

Job Service and other Job Center staff should not administer employment tests for employers until and unless it has been determined the tests are valid and standardized. The DWD Director of Counseling and Testing can assist staff to make this determination.

To avoid potential liability, employment testing should not be conducted in Job Centers until this determination is made even when staff are not involved in the administration. The requirement to participate in an employment testing can be mentioned in job orders if the test is relevant to the job.

B6. Fees, Investments, and Purchases as a Condition of Employment

Job orders will not be accepted when the employer or agent of the 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.

Referrals to private employment agencies are permitted as long as the applicant is not charged a fee.

Monetary investments and purchases of employment related items are not considered fees. Employment situations involving investments or purchases may or may not be

acceptable depending on the circumstances involved. Investments or purchases that primarily benefit the employer, cover the costs of the hiring process, or would commonly be considered the employer's cost of doing business are unacceptable for a job order. Investments or purchases that are primarily personal, benefit the employee, are a cost of entering an occupation, or that are usable in other employment or personal situations are acceptable for a job order. Important factors in making these decisions are ownership of the item, control of the item, and transferability to other employment situations. Staff should exercise professional judgment and look at the whole employment situation in making these decisions.

Examples of unacceptable costs to the applicant include:

Paying for employment tests such as personality surveys, aptitude tests, skill assessments or civil service tests.
Paying for background checks.
Purchasing sales inventory (raises an issue of the situation being self-employment).
Purchasing sales kits that are specific to the company.
Purchasing safety equipment that would reasonably be considered a cost of doing business.
Drug testing and medical examinations as a condition of employment are required by law to be paid for by the employer. The job order will clearly state any requirement for pre-employment medical testing.

Examples of acceptable costs to the applicant include:

Professional or occupational licenses such as nursing certificates, insurance licenses, teaching certificates and CDL driving licenses.
Occupational certifications normally obtained as part of a vocational training program.
Tools in occupations that normally own their own tools such as mechanics and the construction trades.
Uniforms, clothing, or safety items common to the occupation such as nursing uniforms, safety shoes, gloves, or professional clothing.
On-the-job use of personal vehicles where mileage is reimbursed.

Any requirements for purchases or use of personal property should be clearly stated on the job order.

See Job Order Policy Memo "Fees for Civil Service Tests", dated September 18, 2003.

References:
Wagner-Peyser Act (29 USC sec 49L)
Workforce Investment Act (Title I sec 195 para 5)
20 CFR 661.410, b2

B7. Foreign Labor Certification

One method for an employer to fill a vacancy when they are unable to find qualified applicants locally is to obtain a Permanent Foreign Labor Certification from the United States (U.S.) Department of Labor (DOL). DOL must certify that there are no qualified U.S. workers available and willing to accept the job. As part of this recruitment process, the employer must advertise the job at least 30 days, but not more than 180 days before the application for permanent labor certification is filed. This means they must place a job listing with a State Employment Security Agency.

There are other requirements of the program that are not the concern of job order writing staff. **The foreign labor certification (FLC) process is the responsibility of the employer**, not the employee, or Job Center staff.

Permanent Foreign Labor Certification job orders should be indistinguishable from any other job order. Staff will handle these job orders in the same manner as any other job order.

Job orders may be placed by the company directly, or by a company representative (an immigration attorney or immigration agent). Applications or resumes may be submitted to the company or to the company representative. Company representative entering job orders online should register to use JobNet Business under the workplace company name.

Temporary FLC job orders are entered, serviced, and closed by the state Foreign Labor Certification Coordinator in the DWD central office. The employer names in these orders are suppressed to ensure that all resumes are sent through the central office for review and not directly to the employer. Temporary FLC job orders will be recognizable because the FLC office in Madison will be listed as the employer and the point of application.
Temporary FLC job orders are not to be updated, closed or otherwise modified by local field staff.

References:
Job Order Policy Memo "Changes to Job Order Policy for Foreign Labor Certification Job Orders", dated February 28, 2005.

DWD information:
http://dwd.wisconsin.gov/det/programs/refugees/Labor/alienlabcert_intro.htm
DOL information: http://www.workforcesecurity.doleta.gov/foreign/about.asp

B8. Independent Contractor Opportunities

The purpose of the public labor exchange is to facilitate employment. Job orders will only be accepted that offer employment opportunities where an employer-employee relationship will exist. Independent contractor opportunities are self-employment, which represent business opportunities, rather than employment. The individual is responsible for paying his/her own quarterly income taxes, disability insurance in lieu of Worker's Compensation,

Social Security taxes, Unemployment Insurance taxes, and other such costs of doing business. **Such requests cannot be accepted as job orders.**

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 of Independent Contractors:

Home-based businesses such as Tupperware, Stanley Products, Amway, etc.
Independent Insurance Agents
Real Estate Brokers
Truck Drivers who are owner/operators

Note: These examples are not inclusive but represent some occupations that usually are considered independent contractors.

References:
20 CFR 651.10, 20, 30 and 50
USC 29 Section 49

B9. Independent Contractor Opportunities at Job Fairs

Independent Contractors will not be permitted to participate in Job Service-led Job Fairs.

For example, in one Job Center, a company looking for independent insurance sales representatives would not be able to participate in the Job Fair because Job Service manages the event. However, in another Job Center, the Job Center Team hosts the Job Fair with Job Service playing only a small role in managing and coordinating the event. The company is allowed to participate in this Job Fair because the Job Center Team managing the Job Fair allows it.

B10. Labor Disputes

Job orders will not be accepted for positions that are vacant due to a labor dispute, strike or lockout.

When a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage, staff shall verify that a labor dispute exists and determine if the position is involved in the labor dispute. If the position is not involved in the labor dispute, the job order can be written. If it is involved, the job order cannot be accepted.

When does a labor dispute exist? Clearly, a work stoppage, either a strike or lockout, triggers our policy. Can a labor dispute that has *not* resulted in a work stoppage trigger our

policy? Yes, but it depends on the situation. These situations must be looked at on a case-by-case basis. There needs to be more than the possibility of a work stoppage. An actual event or action is needed. Rumors of a strike, knowledge that the labor contract has expired, or news media reports of difficult labor negotiations may not be sufficient to trigger our policy. Staff should consult with management or seek technical assistance in these situations before accepting or declining a job order.

Staff shall resume full job order taking services when they are sure that the labor dispute has been terminated.

Local Job Center staff should call the Job Service Bureau policy staff in the Central Office to notify them of any labor dispute. The Central Office will notify the federal authorities if that is required by Federal Regulations.

When a job order is taken for a position NOT involved in the labor dispute, but at a company with a labor dispute, the following statement must be placed in the “Job Duties and Responsibilities” text field of a job order:

The Mandatory Statement must be checked on the Description Tab of the job order:

"This position is with a company currently involved with a labor dispute. This position is NOT part of the dispute and the person hired will NOT be replacing an employee involved with the labor dispute."

Please note: Staffing agencies may be used to recruit replacement workers during the labor dispute. **We cannot accept job orders that would recruit for positions affected by the labor dispute**. For this reason, job order policy requires staffing agencies to provide the name of the work site company on all job orders. This information is placed in the staff comments section and ***must be kept confidential by staff***.

See Job Order Policy Memo "Job Orders and Labor Disputes" dated December 6, 2004.

Reference:
Code of Federal Regulations, 20CFR 652.9

B11. On-site Recruitment

An employer who does on-site recruitment at a Job Center must have a job order listed on JobNet at the time of the recruitment.

B12. Timeliness

Job orders will be processed as soon as possible. Job orders should be entered (or reviewed and approved, if entered by the employer) into JobNet Business as soon as possible. All job orders are processed in the order in which they are received. Orders shall be verified for accuracy of content immediately. Promptly close all job orders when filled.

B13. Training or Work Experience Opportunities

Work that is primarily a training or work experience opportunity must NOT be listed on JobNet. Agencies who offer individuals the opportunity to gain work experience, work readiness, training, job development, skill building or similar activities are not to be included as jobs on JobNet. However, the kinds of opportunities mentioned above can be posted in Job Centers and Job Center staff can distribute information about them.

To determine if an opportunity is appropriate for JobNet, three criteria should be considered: 1) Does an employee-employer relationship exist between the worksite organization and the worker? 2) Is the work activity primarily intended to provide experience, build work readiness, overcome employment barriers, develop employment skills, or directly connected to a course of study? OR, is it primarily work that has an entry level, training, on-the-job training, or apprenticeship component? 3) Is the opportunity available to the general public? Is there a need to advertise the opportunity outside of existing program participants to recruit candidates? If no real employer-employee relationship exists, the activity is primarily training focused and the general public cannot apply, the opportunity is inappropriate for, and should not be listed on, JobNet.

Apprenticeship opportunities are an exception as explained in Section A3. Apprenticeship of this policy document.

Title V of the Older Americans Act of 1965 establishes an “Older Worker Community Service Employment Program”. The program uses community service opportunities to promote part-time employment for low income persons 55 years old or older. Jobs created under Title V programs are appropriate for JobNet. They are not discriminatory because they provide a preference to older workers and are specifically authorized by Federal legislation. They are primarily employment and not training as required above.

See Job Order Memo "Age Discrimination and Title V Job Orders" (undated).

B14. Unusual Job Orders

JobNet and the services of Job Service are paid for entirely by public funds. For this reason, Job Service reserves the right to refuse or discontinue the listing of a job order that is contrary to community standards of good taste or decency, is misleading, or appears to involve conduct that violates state law.

If a job order writer who is authorized to make the determination decides that a job order should be refused or discontinued under the policy stated above, the job order writer shall notify the Job Service Supervisor for the local office, who will notify the person who submitted the job order. The submitter may request a review. The review will be conducted by the Director of the Job Service Bureau or the Director's designee and the DWD Office of Legal Counsel.

See **Section B15**. and Job Order Policy memo "Declining Job Orders vs. Discontinuation of Service", dated December 6, 2004.

B15. Declining Job Orders and Discontinuation of Service

Job order responsible staff and supervisors have discretion to decline job orders that do not meet applicable employment laws or comply with DET policy. Because JobNet and other services of Job Service are paid for by public funds, Job Service reserves the right to refuse the listing of a job order that is contrary to community standards of good taste or decency, is misleading, or appears to be in violation of employment related laws (see B14 Unusual Job Orders). Staff and supervisors have local discretion to decline job orders until modified.

If a job order writer who is authorized to make the determination decides that a job order should be refused under the policy stated above, that staff person shall notify the Job Service Supervisor for the local office, who will notify the person who submitted the job order. The submitter may request a review of the determination. If the employer agrees to modify, amend or change the contents of the job order to comply with Job Order policy and employment related laws, the order writer can then process the order.

Local staff and supervisors can temporarily suspend job order services to a company if continuation of service could "cause substantial harm to a significant number of workers" (20 CFR 658.501(b)) or pending a decision by DET Management to discontinue service permanently. The employer must be notified in writing and provided an opportunity to appeal to DET Management.

Formal discontinuation of job order service must be based on specific evidence of wrong doing as outlined below. DET Management must make this decision. The following are some conditions identified as the basis for discontinuation of services to employers (20 CFR 658.501(a)):

A. Employer submits and refuses to alter or withdraw job orders containing specifications which are contrary to employment related laws.

B. Employer submits interstate or intrastate job workers seeking workers to perform agricultural or food processing work and refuses to provide assurances that the jobs offered are in compliance with employment related laws.

C. Employer is found, through field checks or otherwise, to have either misrepresented the terms and conditions of employment specified on job orders or to have failed to comply fully with assurances made on job orders.

D. Local Job Service staff or Job Service Complaint Specialists are informed or become aware that three or more formal written complaints have been filed against an employer who placed a job order within the past 12 months (Job Service Related Complaints). If complaints are resolved locally, the employer may continue to receive services. If

complaints are not resolved, the employer is informed that job orders will be pulled out of the system with no more applicant referrals, until the complaints are resolved.

E. Job Service staff (either local or central office) become aware or are notified by an enforcement agency or agencies after an investigation, that complaints against that employer did violate employment-related laws.

Employers can be reinstated by providing evidence that the reasons for discontinuation of service have been eliminated (20 CFR 658.504).

See Job Order Policy memo "Declining a Job Order vs. Discontinuation of Service", dated December 6, 2004.

References:
Wagner-Peyser Act (29 USC sec 49L)
20 CFR 658.501, 502, 503, 504

Section C: Appendix

Process for Policy & Procedure Issue Resolution

Local Job Order Responsible Staff who need technical assistance to resolve a job order policy issue or have related questions should:

Consult the Job Order Policies and Procedures Document for relevant guidance. This policy is available at http://dwd.wisconsin.gov/jobservice/joborder/ and on the JobNet Business menu tree.

1. If policy exists, follow the process listed.

2. If no applicable policy is available, discuss the issue with the Job Order Policy Contact. Ask for guidance and follow his/her direction.

3. If additional assistance is needed, the Job Order Policy Contact will contact the Central Office for advice. As needed, Central Office staff will consult with DWD Legal Counsel for guidance.

4. Based on the advice from the Central Office, follow the instructions on how to proceed with the job order and inform the employer when necessary.

Contact Information

Job Order Policy Contact:

Tom Younger
Acting District Director
Job Service Bureau

TEL 715-261-7742
EMAIL Thomas.Younger@dwd.state.wi.us

JobNet Business Policy, Procedural or Technical Questions:

JobNet Business Help Desk
TEL 608-267-9690 (choose option 2 - JobNet Business when prompted to make a selection)
EMAIL DWSJOBNETHELP@dwd.state.wi.us

Foreign Labor Certification:

Joy (Carol) Schmitt
Foreign Labor Certification
Migrant Services Bureau

TEL 608-266-0017
FAX 608-261-8506
EMAIL caroljoy.schmitt@dwd.state.wi.us

Job Service Complaint System:

Isabel Molina Jefferson
Complaint Coordinator
Job Service Bureau

TEL 608-266-0487
FAX 608-261-6956
EMAIL Isabel.MolinaJefferson@dwd.state.wi.us

For questions on Native American Sovereignty:

Rachelle Ashley
Native American Liaison
DWD

TEL 608-261-4883
EMAIL rachelle.ashley@dwd.state.wi.us

This job order policy document can be found on the DWD Web site at:
http://dwd.wisconsin.gov/jobservice/joborder/