

Employment Service Guide

December 1, 2020

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Overview of Guide

The Employment Service (ES) program administered by the Texas Workforce Commission (TWC) is governed by the Wagner-Peyser Act and federal regulations published by the US Department of Labor's (DOL) Employment and Training Administration (ETA). The program is funded by unemployment insurance (UI) taxes assessed on employers through the [Federal Unemployment Tax Act \(26 United States Code \(USC\), Chapter 23\)](#).

The [Wagner-Peyser Act of 1933](#), which established a nationwide system of public employment offices known as the Employment Service (formerly known as Job Service), was amended by the Workforce Investment Act (WIA) of 1998 to establish the one-stop service delivery model. The one-stop service delivery system is intended to provide universal access to an integrated array of labor-exchange (job-matching) services through self-service or with staff assistance. This allows employers, workers, and job seekers to obtain the services they need, when they need them, and in the manner that they prefer (for example, online, in person, or by phone). WIA was replaced by the [Workforce Innovation and Opportunity Act \(WIOA\) of 2014](#), which further amended the Wagner-Peyser Act to align and improve employment, training, and education programs, and strengthen the workforce development system through innovation.

ES provides a variety of employment-related services (sometimes referred to as Wagner-Peyser services) for job seekers and employers, depending on the needs of the labor market, including the following:

- Job search assistance, job referral, and placement assistance for job seekers
- Reemployment services for unemployment claimants
- Recruitment services for employers with job openings
- Assessment of skill levels, abilities, and aptitudes
- Career guidance
- Job search workshops
- Referral to training

Employer services include the following:

- Referral of job seekers to available job openings
- Assistance with developing job order requirements
- Matching job seekers with job requirements, skills, and other attributes
- Assisting employers with special recruitment needs
- Arranging job fairs
- Assisting employers with analyzing hard-to-fill jobs
- Assisting with job restructuring
- Helping employers mitigate the impact of layoffs

In addition to universal access for employers and job seekers, ES provides specialized services to the following:

- Veterans
- Individuals with disabilities
- Migrant and seasonal farmworkers
- Offenders
- Youth
- Older workers

The core principles of the ES program are as follows:

- Help employers fill jobs by recruiting, screening, and referring qualified job seekers who meet job requirements
- Help job seekers find employment for which they are qualified in order to help establish long-term employment stability and earning potential
- Facilitate job matching between employers and job seekers
- Participate in clearing labor between states, including the use of a standardized classification system
- Ensure that unemployment claimants meet the work-test requirement by registering with the state ES system
- Provide information about labor market conditions
- Address or help address labor issues regarding state and federal laws

The purpose of this guide is to:

- Provide information about ES policies and procedures
- Highlight how ES supports the primary mission of TWC and Local Workforce Development Boards (Boards)

The objectives of this guide include:

- Establishing a comprehensive resource for ES information and operational guidance and oversight of service delivery
- Communicating expectations for program design and service delivery
- Ensuring a consistent level of service

List of Revisions

This guide was last updated on December 1, 2020. The tables below include a comprehensive list of the substantive changes made to this guide, including the revision date, the section revised, and a brief explanation of the specific revision.

Note: This guide also contains minor, nonsubstantive editorial changes that are not included in the List of Revisions.

December 1, 2020

| Section | Comments |
|------------|---|
| A-110 | Adds reference to Appendix D |
| B-202c | Adds subsection detailing guidance for staff to improve quality job order matches for individuals and employers |
| C-202 | Adds preexisting account search language |
| C-203 | Adds language to clarify that an employer-employee relationship must exist between employing entities and individuals Adds listing of ineligibility reasons for entities and links to appendixes |
| C-204 | Adds multilevel marketing (MLM) opportunities to disallowed job order examples |
| D-303 | Updates age of former foster youth in accordance with TWC Rule |
| E-103 | Removes references to Web Report #219 and related TA Bulletin 248 |
| Appendix A | Adds employer-employee relationship verification flowchart |
| Appendix B | Adds definitions of employing entities |
| Appendix C | Adds steps to verify entity by local staff |
| Appendix D | Adds guidance to ensure quality of veteran job seeker registrations |

February 20, 2020

| Section | Comments |
|----------------|--|
| All Sections | Update references from WIA to WIOA |
| A-102 | Moves Unemployment Insurance Work Test section from A-107 |
| A-103 | Moves Interstate Clearance of Job Postings section from A-102 |
| A-104 | Moves Nondiscrimination section from A-103 and updates non-exclusion requirement to include any applicable nondiscrimination law |
| A-105 | Adds new section on Discrimination Based on Gender Identity, Gender Expression, and Sex Stereotyping |
| A-106 | Moves Services to Persons with Disabilities section from A-109 |
| A-107 | Moves Security of Personal Identity Data section from E-200 |
| A-108 | Moves Financial Literacy section from E-400 |
| A-109 | Moves Professional Standards section from A-113 |
| A-110 | Moves Veterans Priority section from A-108 and updates WD Letter reference |
| A-200 | Moves all Complaint Procedures sections from E-100 |
| A-202 | Adds details of 29 CFR §37.73 requirements and updates form reference |
| A-300 | Moves all Request for Information sections from E-300 |
| A-301 | Updates guidance to minimize risk of PII sharing |
| A-303 | Adds information on unauthorized release of confidential information and references to TWC rules Chapters §815 and §843 |

| Section | Comments |
|----------------|---|
| A-305 | Adds new section Law Enforcement Information Requests |
| B-202a | Removes WorkInTexas.com Forms section and moves WorkInTexas.com Support Network section from B-202b |
| B-202b | Moves Procedures for Contacting the Workforce Systems Support Desk section from B-202c |
| B-203 | Updates details of Went to Work service elements |
| C-203 | Updates information on ineligible employers account documentation |
| C-204 | Adds employer-use job order requirement details |
| C-301 | Updates job order details list and removed service levels |
| C-303 | Moves information related to professional employer organizations (PEOs) to section C-503 |
| C-304 | Updates information related to National Labor Exchange, formerly known as US.Jobs |
| C-503 | Updates information on PEOs and TPAs based on new system function |
| C-506 | Updates process to list OJT in WorkInTexas.com |
| C-703 | Updates LMI websites list |
| C-803 | Updates customized training information |
| C-1003 | Updates information for H2-B jobs |
| C-1200 | Updates WOTC-eligible categories |
| D-102 | Removes paper application reference and updates required individual information |
| D-103 | Removes TA Bulletin 194 information |
| D-104 | Updates LMI website's list |

| Section | Comments |
|---------|--|
| D-302 | Removes job training programs information, adds WD Letter 25-15 information, and removes priority of service information for WIOA programs |
| D-304 | Updates priority for child care services list |
| D-403 | Updates available claimant services |
| D-405 | Updates DADS to TWC-VR |
| D-406 | Updates section to clarify audience |
| D-408 | Removes statement that claimants are priority population |
| D-500 | Updates sections from RRES to RESEA and moves program details into RESEA Guide |
| E-100 | Moves Performance Measures sections from F-100 |

August 17, 2017

| Section | Comments |
|-----------------------|--|
| E-302 | Adds language about the statute of limitations for corrections and information about zero wage records |

- [ES Guide rev--E-302 Wage Records Request-Track Changes](#)

April 10, 2015

| Section | Comments |
|-----------------------|---|
| A-107 | Adds updated information on suitable work |
| A-111 | Adds updated information from Texas Labor Code §301.085 |

| Section | Comments |
|-------------------------|--|
| B-202 | Adds staff limitation on entry of employer and individual registration without prior consultation |
| B-202.b | Adds updated information – name changed to Workforce Systems Support Desk |
| B-203 | Adds information on WorkInTexas.com service Went to Work |
| C-201 | Adds updated information to correspond with WorkInTexas.com Release 6.1 – November 7, 2013, on employer access |
| C-204 | Adds updated information from 20 CFR §653.503 |
| C-303 | Adds information to correspond with WorkInTexas.com Employer Use Agreement |
| C-304 | Adds updated information on US.Jobs from TA Bulletin 264 and WorkInTexas.com Release 6.7 from April 2, 2015 |
| C-408 | Adds information to correspond with section D-400 |
| C-409 | Adds new section on Employment Scams |
| C-503 | Adds updated information on temporary help firms and professional employer organizations |
| C-601 | Adds information to correspond with section C-201 |
| C-802 | Adds updated information to correspond with OJT employer reimbursement waiver |
| C-806 | Adds updated information on work experience |
| C-900 | Adds updated information on rapid response services |
| C-1003 | Adds information on Form I-9 from WD Letter 15-10, Attachment 1 |
| C-1200 | Updates list of approved target groups for Work Opportunity Tax Credit conditional certifications |

| Section | Comments |
|-----------------------|---|
| D-104 | Adds information from TA Bulletin 233 on mySkillsmyFuture.com |
| D-106 | Adds new section on services through community- and faith-based organizations |
| D-302 | Adds information on veterans with significant barriers to employment from WD Letter 08-15 |
| D-304 | Updates priority of service populations according to TWC rule §809.43(a)(2) |
| D-400 | Adds new and updated information on ES/UI coordination, work search requirements, suitable work, TWC-approved training for UI claimants, and UI appeals |
| D-401 | Clarifies claimant requirement to accept suitable jobs |
| D-500 | Adds information to correspond with WorkInTexas.com Release 5.4 – September 27, 2012, and the WIA Eligibility Guidelines |
| D-600 | Adds new section with information on the Texas payday wage claim process from TA Bulletin 185 and adds restriction on printing wage claim forms on local Board letterhead |
| E-300 | Adds updated information on open records requests |
| E-300 | Adds updated information on open records requests |
| Rescissions | WD Letters 33-00; 33-00 Ch. 1; 33-00 Ch. 2; 13-07; 55-09; 15-10 |
| Rescissions | TA Bulletins 113; 145; 171; 185; 229; 233; 264 |

Part A – Operations

A-100: PROGRAM REQUIREMENTS

A-101: Code of Federal Regulations, Part 652 Minimum Requirements

The Code of Federal Regulations (CFR), [Title 20, Chapter V, Part 652](#) (Establishment and Functioning of State Employment Services) requires that, at a minimum, each state administer a labor exchange (job matching) system that has the capacity to do the following:

- Help job seekers find employment
- Help employers fill job openings
- Facilitate the match between job seekers and employers
- Participate in a system for clearing labor between the states, including the use of standardized classification systems issued by the Secretary of Labor
- Meet the work-test requirements of the state unemployment compensation system
- Provide labor exchange services as identified in 20 CFR, Chapter V, §678.430(a), §7(a) of the Wagner-Peyser Act, and WIOA §134(c)(2)(A)(iv).

The entire text of [20 CFR, Chapter V, Part 652](#) is available on the US Department of Labor (DOL) website.

A-102: Unemployment Insurance Work Test

Workers who lose their jobs through no fault of their own may be eligible for unemployment benefits, which are funded by a state employer tax or direct reimbursements by certain employers. To be eligible, an unemployment claimant must comply with the work-test requirements by being able and available to accept suitable work and by actively seeking full-time work if required to do so.

The Texas Workforce Commission (TWC) Unemployment Insurance Division determines whether a job is suitable based on the following:

- The unemployment claimant's experience, qualifications, and training
- Working conditions and pay for similar work in the claimant's local workforce development area (workforce area)
- Any risks to the claimant's health, safety, or morals
- Distance to work from the claimant's home with consideration of local commuting patterns
- How long the claimant has been unemployed

During claimants' first eight weeks of unemployment, claimants must be willing to accept a suitable job that pays at least 90 percent of their normal wage. After claimants have been unemployed for eight weeks, claimants must be willing to accept a suitable job that pays at least 75 percent of their normal wage.

Local Workforce Development Boards (Boards) must ensure that when Workforce Solutions Office staff becomes aware that a claimant has failed to comply with the work test, staff reports the failure to the local Workforce/Unemployment Insurance (WF/UI) coordinator, who in turn, reports the issue to the state WF/UI coordinator.

For additional information, see the following:

- [D-401: About Employment Service/Unemployment Insurance Coordination](#)
- [20 CFR §652.210](#)
- [Texas Unemployment Compensation Act §207.008 and §207.021\(a\)\(1\), \(3\), \(4\), and \(5\)](#)
- TWC's UI rules at [40 Texas Administrative Code \(TAC\), Chapter 815, §815.20 and §815.28](#)
- Workforce Development ([WD](#)) [Letter 17-05](#), issued July 14, 2005, and entitled "New Unemployment Insurance Minimum Pay Reduction Requirements in WorkInTexas.com," and subsequent updates

A-103: Interstate Clearance of Job Orders

Interstate clearance of job orders ensures that job seekers and employers in multistate labor areas have full access to job opportunities and the available labor pool respectively without regard to state boundaries. This is primarily directed at, and particularly helpful to, agricultural employers and laborers.

When an out-of-state employer wishes to post an out-of-state job in WorkInTexas.com, Texas' state job bank, Boards must ensure that Workforce Solutions Office staff directs the employer to the Employment Service (ES) agency in the employer's home state for assistance order the job. If the employer wishes to post farm work or food processing jobs—regardless of the state in which the employer operates—Boards must ensure that Workforce Solutions Office staff directs the employer to TWC's Agricultural Services Unit.

To find an ES office in a particular state, go to [America's Service Locator](#) and enter the ZIP code or other location information.

A-104: Nondiscrimination

Regulations at [20 CFR §652.8\(j\)\(1\)](#) require, in part, that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of, or in connection with, any services or activities authorized under the

Wagner-Peyser Act in violation of any applicable nondiscrimination law. The regulations implementing this provision, administered and enforced by DOL's Civil Rights Center (CRC), apply to all programs and activities that are part of the one-stop delivery system. [29 CFR §37.2\(a\)\(2\)](#).

[Regulations at 20 CFR §652.8\(j\)\(2\)](#) require, in part, that discriminatory job orders must not be accepted, except where the stated requirement is a bona fide occupational qualification. (See also [C-507](#): Job Orders with a Bona Fide Occupational Qualification.)

Boards must ensure that job orders comply with all applicable federal and state laws, such as the Fair Labor Standards Act, the Texas Child Labor Law, and the Texas Payday Law.

A-105: Discrimination Based on Gender Identity, Gender Expression, and Sex Stereotyping

[DOL's Training and Employment Guidance Letter \(TEGL\) 37-14](#), issued May 29, 2015, and entitled "Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System," states that although gender identity is not an explicitly protected basis under the applicable federal laws, discrimination based on gender identity, gender expression, and sex stereotyping has been interpreted to be a form of prohibited sex discrimination, including under laws that apply to federally financially assisted employment, training, and education programs and activities.

Boards must do the following:

- Ensure that Workforce Solutions Offices provide equal access to programs and services regardless of gender identity, sexual orientation, or expression thereof
- Ensure that Workforce Solutions Office staff is aware, through training or other appropriate means, that entities in the public workforce systems are prohibited from discriminating on the basis of sex-based stereotypes, including stereotypes about how individuals of a particular sex are expected to look, speak, or act
- Ensure that Workforce Solutions Office staff complies with the requirements under [WIOA §188](#) and [20 CFR §652.8\(j\)\(1\)](#) and [20 CFR §652.8\(j\)\(2\)](#), which prohibit discrimination and require complaints alleging discrimination to be processed in accordance with DOL regulations
- Review existing policies and procedures and make any necessary changes using [TEGL 37-14, Attachment 2](#), as guidance
- Ensure that Workforce Solutions Office staff is aware of and familiar with key terminology for working with lesbian, gay, bisexual, and transgender (LGBT) customers. [TEGL 37-14, Attachment 1](#), provides key terms and definitions that can facilitate more effective communication between LGBT individuals and Workforce Solutions Office staff.

- Ensure that Equal Opportunity (EO) officers carefully investigate complaints by customers or employees alleging gender identity or sex stereotyping discrimination to determine whether discrimination has occurred on the basis of sex as discussed in [TEGL 37-14, Attachment 2](#)
- Ensure that EO officers become knowledgeable on state and local laws in order to advise customers or employees of those laws and how to file complaints. EO officers must carefully investigate complaints by customers or employees alleging gender identity or sex stereotyping discrimination to determine whether discrimination has occurred as discussed in [TEGL 37-14, Attachment 2](#).

For additional information, see the following:

- [C-303: Job Order Maintenance](#)
- [C-401: About Job Orders That Violate Federal or State Law](#)
- [TEGL 37-14](#)

A-106: Services to Individuals with Disabilities

The Wagner-Peyser Act and the Americans with Disabilities Act (ADA) provide for voluntary disclosure of disabilities. ADA also requires that reasonable accommodations be provided upon request to job seekers seeking Workforce Solutions Office services. For additional information on providing reasonable accommodations, see the following:

- [WD Letter 24-01](#), issued June 22, 2001, and entitled “Prohibition Against Discrimination Based on Disability or Limited English Proficiency in the Administration of Workforce Services”
- [WD Letter 42-00](#), issued May 16, 2000, and entitled “Accessibility at Texas Workforce Centers for Individuals with Disabilities”

The nondiscrimination and universal access requirements of WIOA §188 and its implementing regulations for individuals with disabilities at 29 CFR §38 require the one-stop delivery system and one-stop career centers to ensure universal access and equal opportunity for individuals with disabilities in the workforce development system. Boards must ensure that Workforce Solutions Office programs, services, and facilities are accessible to individuals with disabilities and other barriers to employment and comply with federal and state requirements. Boards must submit the name and telephone number of a liaison on accessibility-related issues to TWC’s three-member Commission.

Boards may refer to DOL’s resources and guidance to evaluate Certified Texas Workforce Solutions Offices and develop service plans that address accessibility for individuals with disabilities.

Boards must ensure that Workforce Solutions Office staff does not disclose information to potential employers about a job seeker's disability without prior approval from the job seeker.

To ensure accessibility for deaf, hard-of-hearing, or speech-disabled individuals, the use of relay services for communication is sometimes required. For a list of relay services and providers, see [TA Bulletin 225](#), issued July 9, 2010, and entitled "Customers Requiring Relay Services," and subsequent updates.

A-107: Security of Personal Identity Data

Boards and other TWC grantees must ensure the security and confidentiality of customers' personal identity data by adhering to the following guidelines.

Physical Security

- Limit access to sensitive printed materials.
- Use proper storage for materials that include personal identity data.
- When possible, after use, shred documents that include personal identity data.
- Secure laptop computers when not in use.
- Do not leave documents that include personal identity data in plain view.

Electronic Security

- Do not share passwords, personal identification numbers, security tokens (for example, smartcards) or any data or equipment used for authentication and identification purposes.
- Log off of computers when leaving them unattended, no matter for how short a time.
- Do not send any personal identity data in the subject or body of an email; instead, save the data to a secure document using the password-protection option, email the password to the recipient, and send the document as an attachment in a separate email.
- Use password protection when saving personal identity data in a document that will be transported on a laptop computer or portable storage device.
- Require each WorkInTexas.com staff user to complete and sign the [TWC Information Resources Usage Agreement, Form P-41](#) on the intranet. (The intranet is not available to the public.)

Additionally, Boards and other TWC grantees must ensure that a customer's confidential personal identity data is not provided to anyone other than that customer, and then only after the customer provides enough information to establish his or her identity.

For further information, see:

- TWC’s Information Security Standards and Guidelines (The intranet is not available to the public.)
- TWC’s Privacy Manual for Safeguarding Sensitive Personally Identifiable Information (The intranet is not available to the public.)
- WD Letter 02-18, issued March 23, 2018, and entitled “Handling and Protection of Personally Identifiable Information and Other Sensitive Information,” and subsequent updates
- WD Letter 11-16, issued June 15, 2016, and entitled “Access and Data Security for Workplace Applications,” and subsequent updates
- WD Letter 14-08, issued March 19, 2008, and entitled “Modifications to Unemployment Insurance Benefits System Access,” and subsequent updates

A-108: Financial Literacy

Boards must be aware of the following.

- As set forth in [Texas Labor Code §302.0027](#), TWC and Boards must ensure that all workforce development programs offered in the state include financial literacy training.
- Boards may use the Money Smart curriculum—available in English, Spanish, Chinese, Korean, and Vietnamese—to ensure that financial literacy training is available to Workforce Solutions Office customers.
- Information on the Money Smart curriculum, including instructions on how to order free copies, is available through the Federal Deposit Insurance Corporation (FDIC) website, [Money Smart – A Financial Education Program](#).

Staff may check local policies to learn more about the financial literacy programs in the workforce area.

For additional information, see [WD Letter 60-05](#), issued October 28, 2005, and entitled “Implementation of Financial Literacy Training in Workforce Development Services,” and subsequent updates.

A-109: Professional Standards

To avoid any appearance of impropriety, Boards must ensure that Workforce Solutions Office staff is prohibited from accomplishing any of the following tasks without first obtaining management permission:

- Completing, updating, or keying in a job seeker account for himself or herself, a coworker, a relative, or a friend using his or her WorkInTexas.com staff logon

- Referring themselves, a coworker, a relative, or a friend to a job order using his or her WorkInTexas.com staff logon. Note: If the service provided is a referral to, or contact on, a job order, Boards must ensure that management approval is documented on the WorkInTexas.com Case Notes page for the employer attached to the affected job order.

Additionally, Boards must ensure that Workforce Solutions Office staff does not make inquiries in the UI Tax or UI Benefits systems for themselves, a coworker, a relative, or a friend.

If a conflict occurs or the appearance of impropriety emerges, Boards must ensure that Workforce Solutions Office staff immediately report the incident to his or her supervisor.

Boards also must ensure that Workforce Solutions Office staff complies with the following:

- Does not access or monitor any records except those that are absolutely necessary to complete assigned job duties
- Is aware that certain information is of a personal nature, is sensitive and confidential under law, and will be disclosed only in compliance with Texas Labor Code §301.085, TWC guidelines, and the Public Information Act
 - [A-108: Security of Personal Identity Data](#)
 - [A-300: Requests for Information](#)

A-110: Veterans Priority

Serving veterans is the responsibility of all Workforce Solutions Office staff. Eligible veterans are entitled to priority in receiving workforce services over all other equally eligible individuals.

To reinforce the federal priority of service provisions under the [Jobs for Veterans Act of 2002](#), and to implement state priority of service provisions, Boards must ensure that eligible veterans are:

- Identified as eligible veterans at the point of entry
- Informed of their entitlement to priority of service
- Provided priority of service in all programs or services that are funded in whole or in part by DOL

For additional information, see the following:

- [Title 38 United States Code \(USC\) §4215](#)
- [20 CFR Part 1010, Priority of Service for Covered Persons](#)
- [Training and Employment Guidance Letter No. 10-09](#), issued November 10, 2009, and entitled “Implementing Priority of Service for Veterans and Eligible Spouses in all Qualified Job Training Programs Funded in whole or in part by the US Department of Labor (DOL)”

- [Texas Labor Code §302.014](#)
- [Texas Family Code, Chapter 264](#)
- [WD Letter 25-15](#), issued October 26, 2015, and entitled “Applying Priority of Service and Identifying and Documenting Eligible Veterans and Transitioning Service Members — Update,” and subsequent updates
- [Appendix D: Ensuring the Quality of Veteran Job Seekers’ Registrations](#)

A-200: COMPLAINT PROCEDURES

A-201: About Complaint Procedures

The two types of ES complaints are:

- complaints involving an employer where potential illegal hiring activities or practices are taking place; and

complaints that are related to a specific job to which the job seeker self-referred or was referred to by Workforce Solutions Office staff and include the following:

- Violations of the terms and conditions of the job order
- Violations of employment-related law (employer-related)

Complaints related to the type and quality of services provided by a Workforce Solutions Office include complaints submitted to TWC regarding staff actions or omissions under ES regulations.

Boards must be aware of the following:

Under [20 CFR, Part 658](#), Subpart E, each state must establish and maintain an Employment Service (ES) complaint system, which includes maintaining a log of all complaints received and prominently displaying approved ES complaint system posters.

Additionally, Boards’ Wagner-Peyser ES contracts mandate that Boards design, implement, and maintain a complaint system and related processes with contracted providers to ensure that each Workforce Solutions Office staff member does the following:

- Designates a “complaint taker” to handle ES complaints
- Maintains a log for recording all complaints received

At a minimum, the complaint log must include the following:

- Date of complaint
- Name of complainant

- Address of complainant
- Type of complainant (employee, job seeker, Workforce Innovation and Opportunity Act participant, etc.)
- Grounds for or basis of the complaint (for example, age, sex, gender, and race)
- Description of the complaint
- Disposition/outcome (for example, settled or forwarded to proper enforcement agency)
- Date of outcome

Boards must be aware of the following suggested practices for the complaint-handling process:

- Keep in mind that complaints do not always need to be taken in writing. If a situation can be addressed immediately and without formality, that is recommended. However, it is the customer's choice.
- Do not attempt to provide legal advice or interpret the law.
- Inform customers that they have the right to file a complaint directly with the proper enforcement agency, as that may lead to quicker resolution.

A-202: ES Complaints Related to Discrimination

Boards must be aware of the following.

Any individual who believes that TWC, or an entity that receives federal funding from or through TWC, has subjected the individual or any specific class of individuals to unlawful discrimination because of age, race, sex (including pregnancy, childbirth, and other related medical conditions, sex stereotyping, transgender status, and gender identity, color, religion, national origin (including limited English proficiency), disability, political affiliation or belief, or against any beneficiary of, applicant to, or participant in programs financially assisted under the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA program or activity can file a charge of discrimination.

Complaints can be filed personally or through an authorized representative, in one of the following ways:

- At the local or state level by completing and submitting a Complaint Information Form (EO-13), available from the following:
 - TWC's Subrecipient and Equal Opportunity (EO) Monitoring department
 - The Board's EO officer
- With CRC by completing and submitting a CRC Complaint Information and Privacy Act Consent Form, available from the following:
 - The state-level EO officer

➤ CRC

To be processed, a complaint must do the following:

- Be in writing
- Contain the following information:
 - The complainant's name and address (or another means of contacting the complainant);
 - The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination)
 - A description of the complainant's allegations. This description must include enough detail to allow the director of DOL's Civil Rights Center (CRC) or the recipient, as applicable, to decide the following:
 - CRC or the recipient, as applicable, has jurisdiction over the complaint
 - The complaint was filed in time
 - The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of the Wagner-Peyser Act
 - The complainant's signature or the signature of the complainant's authorized representative

A charge of discrimination must be filed within 180 days of the alleged act of discrimination.

A-203: ES Complaints Not Related to Discrimination

Boards and Workforce Solutions Offices must have a written policy on complaint resolution for complaints not based on discrimination, as set forth in [20 CFR §658.401–§658.416](#).

If a complaint is not based on discrimination but on program or customer service issues, Boards must ensure that the complaint is processed in accordance with local policies and procedures.

Examples of complaints not based on discrimination include the following:

- Complaints alleging discourteous treatment by Workforce Solutions Office staff
- Alleged violations of the terms and conditions of a job order in WorkInTexas.com

Once a complaint is received, Boards must ensure that there is an attempt to resolve the complaint at the Workforce Solutions Office level. If this attempt is unsuccessful, the complaint may be referred to the Board for resolution. If complaints are not resolved satisfactorily at the Workforce Solutions Office or Board level, the next step is to submit an appeal with TWC's Appeals department:

Mail:
Appeal Tribunal
Texas Workforce Commission
101 E. 15th Street, Room 410
Austin, Texas 78778-0001
Fax: (512) 475-1135
Email: appeals@twc.state.tx.us

A-204: Non-ES–Related Complaints

Boards must ensure that non-ES–related complaints are referred as follows:

- Refer complaints alleging violations of employment-related laws, such as the Fair Labor Standards Act and wage and hour issues, to [DOL’s Wage and Hour Division](#).
- Refer complaints alleging unsafe working conditions to [DOL’s Occupational Safety and Health Administration](#).
- Refer complaints alleging discrimination by an employer that did not have an internal job order in WorkInTexas.com to [TWC’s Civil Rights Division](#).

For additional information, see the [TWC website](#).

A-205: Required Posters

Boards must ensure that all Workforce Solutions Offices prominently display approved ES complaint system posters, including the following:

- Equal Opportunity is the Law (EEO-8) in English and Spanish
- Job Service Complaint System in English and Spanish

These and other posters are available online from TWC or DOL:

- [Posters for the Workplace – TWC](#)
- [Posters – DOL](#)

A-300: REQUESTS FOR INFORMATION

A-301: General Information

Boards must be aware of the following.

TWC and Boards must comply with Texas Government Code §552.001 relating to the Public Information Act and disclosure of information.

Individuals or entities requesting information include, but are not limited to, the following:

- Employers
- Job seekers
- The media in any form (TV, radio, newspapers, and so forth)
- Other government agencies
- Private-sector entities such as banks and schools

A-302: Wage Record Requests

Boards must ensure that when an individual comes into the Workforce Solutions Office requesting wage record information, Workforce Solutions Office staff takes the following actions:

- Verifies the identity of the individual by doing the following:
 - Reviewing a state-issued photo identification card such as a driver's license
 - Asking the individual to provide his or her Social Security number (SSN) via keypad/number pad, in writing or verbally (Individuals who choose to provide their SSN verbally should do so in a secure location.)
- Signs on to the TWC mainframe and accesses the Wage Records Information Report (WRIR) screen to do the following:
 - Verify that the SSN provided matches the SSN recorded
 - Check for any anomalies—for example, wages listed for a name that is not the individual's name (Anomalies do not include wages listed under an individual's birth surname.)
 - If the wage record has another person's wages listed under the individual's name, staff **cannot** give the individual details about those wages such as the name of the other individual or the employer.

Note: If anomalies exist in the wage record, Workforce Solutions Office staff should explain that when wages are listed for a name other than the individual's, it is most likely due to a reporting error by the employer. When reporting employee wages, an employer can inadvertently transpose two digits in an SSN or make some other error that results in another employee's wages being reported under the requesting individual's SSN.

- If there are no anomalies on the wage record, prints the screen and provides the wage record to the requesting individual. Staff must not provide wage records that include wages belonging to another individual. Wage information reported under another name is considered Personally Identifiable Information and cannot be released, even if the wages are incorrectly reported under the wrong SSN.
- If there are wage record anomalies that need correcting before the records can be released, performs the following actions:
 - Verifies the individual's identity by taking the following actions:
 - Reviewing the individual's state- or government-issued identification card
 - Reviewing the individual's Social Security card or other correspondence from the Social Security Administration reflecting the individual's name and full SSN (A verbal identification of the SSN is not acceptable.)
 - Sends an **ENCRYPTED** email to TaxWageRecordCorrection@twc.state.tx.us with the following information:
 - The individual's SSN
 - A statement detailing which wages must be corrected or removed from association with the SSN
 - A statement from Workforce Solutions Office staff indicating that staff confirmed the individual's name on the Social Security card and state- or government-issued identification card, and that the photo on the identification card matches the individual requesting the wage correction (DO NOT send copies of the documents.)
 - Instructs the individual to return after seven days for an updated record. At that time, Workforce Solutions Office staff will follow the same protocol as presented above to generate a wage record for the requester.

Note: If the individual's need for the wage record is urgent (for example, to prevent eviction or qualify for public assistance medical treatment), staff must indicate this in the tax wage record correction email and request to be notified when the correction has been made. Once notified of the correction, Workforce Solutions Office staff may then contact the individual to inform him or her that the wage record is ready.

Boards must be aware that TWC Tax department staff will remove the identified wages by changing the SSN for the incorrect wages to a "pseudo SSN" based on the account number.

Boards must be aware that "zero wage" entries will not be removed from the wage record. A zero wage listing means that wages have previously been removed from the requested SSN. The most common reason for a zero wage listing is employer clerical error. Zero wage entries will

not be removed from the wage record because they provide a historical record of changes to wage data for the TWC Tax department.

Boards must ensure that Workforce Solutions Office staff with responsibility for handling wage records requests is provided with access to the WRIR screen in the TWC mainframe system through the Resource Access Control Facility (RACF). For more information, refer to [WD Letter 13-18](#), issued November 2, 2018, and titled “Wage Record Requests.”

A-303: Open Records Requests

Boards must be aware that all general ES program information—for example, performance measures, budget, and strategic planning—is public information. However, information identifying any individual or past or present employer or employing unit, and information that could be combined with other publicly available information to reveal information identifying any individual or past or present employer or employing unit is confidential under [Texas Labor Code §301.085](#) and may be disclosed only for the purpose of job matching. Unemployment compensation information (including wage records) and job-matching services information is not public information for purposes of the Public Information Act.

Boards must be aware that unauthorized release of confidential unemployment compensation and job-matching services information is a Class A misdemeanor.

See TWC’s Job Matching Services rule [§843.1](#) and TWC’s Unemployment Insurance rules [§§815.161–815.168](#) for more information on confidentiality and disclosure of confidential information.

Boards must comply with the responsibilities and requirements set forth in the Open Meetings and Public Information Acts, and in [WD Letter 80-05, Change 1](#), issued March 19, 2008, and titled “Senate Bill 286: Open Meetings and Public Information Training Requirements for Elected and Appointed Public Officials and Board Responsibilities under the Open Meetings Act and Public Information Act,” and subsequent updates.

For additional information, see:

Boards must be aware that requests for public information must be:

- immediately directed to the TWC Open Records coordinator; and
- submitted by the requester in writing.

An [open records request form and instructions](#) are available online.

A written request is one submitted in almost any form that can be read, including an email, letter, memo, or handwritten note. Requests must include the following:

- Specifics regarding what information is needed
- The requester's name and contact information
- In the case of unemployment claimants and other individuals seeking access to their confidential information, the individual's Social Security number, a copy of the individual's state- or government-issued photo ID (for identification verification purposes), and the individual's signature

Boards must be aware that charges may apply to a request for records.

With the exception of information that is confidential by law or is defined in state statute as not being "public information" for purposes of the Public Information Act—including claimant information, employer tax information, identifying information of job seekers and employers in the job-matching systems, and student records—nearly all recorded information maintained by TWC is subject to disclosure under the Public Information Act. TWC is required to respond to any written request as promptly as possible—but no later than 10 business days after the date the information is requested—with the following:

- Request for an Attorney General Ruling, if an exception to disclosure is being asserted
- Cost estimate if the request is over \$40
- Release of the information:
 - without redactions; or
 - with redactions with an explanation of authority for redacting the information
- A certification of the date the information will be released

A [one-hour training on the Public Information Act](#) is available online.

Boards must do the following:

- Respond to requests for records collected from customers through the Boards (for example, child care and employment and training records)
- Direct all requests for information collected and maintained by TWC (for example, employer tax reports) to:

TWC Open Records
101 E. 15th Street, Room 266
Austin, Texas 78778-0001
Phone: (512) 463-2422
Fax: (512) 463-2990
Email: open.records@twc.state.tx.us

A-304: Unemployment Benefit Information

Boards must be aware of the following:

- Unemployment claimants can access information on their most recent unemployment claim for benefits, such as benefit amounts, remaining balance, and payment information, by logging into the [Unemployment Benefits System](#).
- Other types of information are available through [self-service portals](#).

Boards must ensure that if, after searching online for specific unemployment information, individuals find that the information is not available, Workforce Solutions Office staff instructs the individual to call the Tele-Center at 800-939-6631 and make a verbal request for the required information and documents. If the information the claimant requested is not available online or from the Tele-Center, the Tele-Center customer service representative will submit a request for a special written letter containing the necessary information.

A-305: Law Enforcement Information Requests

Boards must not release any official, confidential, or personally identifiable information (PII), except as identified in previous sections, even to law enforcement representatives.

Boards must ensure that all requests for such protected information are routed to TWC's Regulatory Integrity Division (RID) for proper verification.

Boards must redirect requests to:

TWC RID Office of Investigations
101 E. 15th Street, Room 508
Austin, Texas 78778-0001
Phone: (512) 463-1801
Email: RID.OfficeofInvestigations@twc.state.tx.us

Part B – Delivery of Services

B-100: EMPLOYMENT SERVICE

Local Workforce Development Boards (Boards) must ensure that a variety of services and multiple levels of services are offered to employers and job seekers. Employment Service (ES) is one segment of the services available in Workforce Solutions Offices. The Wagner-Peyser Act states that “the basic purpose of ES is to improve the functioning of the nation’s labor markets by bringing together individuals who are seeking employment and employers who are seeking workers.”

ES provides universal access to the following:

- Job search and placement assistance
- Job referrals
- Labor market information
- An array of other services available in Workforce Solutions Offices throughout the state

In 2003, the Texas Workforce Commission (TWC) implemented the Texas Model for the delivery of ES services. Under the Texas Model, Boards and their Workforce Solutions Offices have full responsibility for day-to-day guidance of state ES staff. TWC still maintains administrative responsibility, but Workforce Solutions Office managers share responsibility for directing daily work assignments, assigning individual performance goals, coordinating hiring, initiating disciplinary action, and evaluating staff performance.

All direction and guidance given to ES employees must be consistent with the provisions of state and federal laws, rules, and regulations governing the administration and delivery of the ES program. TWC provides technical support and quality assurance to Boards and contracted service providers through local Integrated Service Area Managers.

B-200: WORKINTEXAS.COM

B-201: About WorkInTexas.com

WorkInTexas.com helps employers and job seekers connect through the internet. Employers and job seekers can register online, browse job seekers or jobs, and request matches against job orders and résumés.

WorkInTexas.com features—available free of charge to employers—include:

- Online self-registration
- Online job order and job matching in real time
- Ability to view résumés and contact job seekers immediately
- Email notification of matches, if requested
- Current labor market information
- Virtual Recruiter tool
- Other recruiting tools and information

WorkInTexas.com features—available free of charge to job seekers—include:

- Online self-registration
- Résumé creation
- Online creation of a State of Texas Application for Employment to apply for state jobs
- Online job matching
- Ability to browse jobs and contact employers immediately
- Email notification of matches, if requested
- Current labor market information
- Access to career tools and training resources
- Access to job notices from other sources (for example, [National Labor Exchange](#))

B-202: WorkInTexas.com Support and Use

Boards must ensure the following:

- Appropriate Workforce Solutions Office staff is trained to use WorkInTexas.com as the job matching and public labor exchange tracking system
- Appropriate Workforce Solutions Office staff is assigned suitable levels of access to WorkInTexas.com

Boards must ensure that Workforce Solutions Office staff does not enter, alter, or otherwise update:

- any individual registration without first consulting the job seeker; or
- an employer, professional employer organization (PEO), or third-party registration (including job orders) without first consulting the primary user for that entity or location.

B-202.a: WorkInTexas.com Support Network

Boards must be aware of the following two-tiered WorkInTexas.com support network.

1. WorkInTexas.com—Local Workforce Development Area Support

Boards must ensure the following:

- At least two staff members in each workforce area are designated as WorkInTexas.com liaisons to provide support and up-to-date system information to appropriate staff in the workforce area
- Up-to-date and correct contact information for WorkInTexas.com liaisons is maintained
- A process for distributing information, routing questions and addressing issues concerning WorkInTexas.com is established
- Resolution of all questions and problems regarding WorkInTexas.com is attempted first through WorkInTexas.com liaisons

2. Workforce Systems Support Desk

Boards must be aware that TWC's Workforce Systems Support Desk:

- provides technical support on issues that WorkInTexas.com liaisons are unable to resolve; and
- operates Monday through Friday during standard [TWC business hours](#).

B-202.b: Procedures for Contacting the Workforce Systems Support Desk

Boards must ensure the following:

- Appropriate staff first contacts the workforce area's WorkInTexas.com liaison for resolution of system problems
- Only WorkInTexas.com liaisons contact the Workforce Systems Support Desk regarding unresolved system problems

Boards must ensure that WorkInTexas.com liaisons report problems and request assistance by doing the following:

- Complete the [WorkInTexas.com Problems and Questions template](#) (Form TWN-027), available on TWC's intranet (The intranet is not available to the public.); and
- Navigate to TWC's Service Now portal, select Workforce Automation and then select WorkInTexas.com, and submit the problem or question along with the TWN-027 form for resolution by the WorkInTexas.com support team [TWC Service Now](#); **or**
- Email the form to the Workforce Systems Support Desk at the address listed in the form's instructions

Boards must ensure that Workforce Systems Support Desk contact information is not provided to employers or job seekers.

B-202.c: Improving WorkInTexas.com Job Match Quality

Boards must ensure that staff reviews relevant account information for all individuals and employers receiving staff-assisted services to ensure that WorkInTexas.com contains the information needed to generate appropriate job matches.

Online, self-service job-matching systems like WorkInTexas.com are only as good as the information they contain. The best job matches occur when job seekers and employers:

- provide as much detail as possible in advance; and
- document skills effectively by using the skill-coding functions that are a standard part of online job-matching systems.

To help ensure quality matches in WorkInTexas.com, Workforce Solutions Office staff and other appropriate users may log in to WorkInTexas.com to access the following training tools in the Learning Center:

- [Individual Courses](#), which include the following:
 - Registration for Job Seekers
 - State of Texas Application for Job Seekers
 - Finding a Job
 - The Virtual Recruiter for Individuals
 - My Workspace Overview
- [Employer Courses](#), which include the following:
 - Post a Job
 - Candidate Résumé Search
 - The Virtual Recruiter for Employers
 - My Employer Workspace Overview

B-203: Went to Work

Boards must be aware that the WorkInTexas.com Went to Work service allows Workforce Solutions Office staff to track when job seekers find work on their own. Boards must ensure that when Workforce Solutions Office staff members record a Went to Work service in WorkInTexas.com, they enter the following service elements:

- Customer Group—Select the Self-Service/Registered Individual Only group.
- Add Service—Select 880 (WTW) Went to Work.
- Actual Service Date—Enter day of discovery or service entry.
- Completion Code—Select “Successful Completion.”
- Employer Name—Enter name of employer that hired the job seeker.
- Verification of Employment—Select “Verify’ link.”
 - If information is received from the employer—select “Documented telephone contact with: Contact Name, Job Title, and Contact Date.”
 - If information is received from the individual—select “Other Applicable Documentation, (specify).” Enter “N/A” in the form field.
- Employer Phone—Enter employer contact phone number if WTW information received from employer.
- Hourly Wage—Enter pay rate, if provided.
- Job Title—Enter job title for which job seeker has been hired.
- Occupation and Title—Select occupation from O*NET code window options.
- Job Start Date—Enter date the job seeker started work.
- Type of Job—Select job type the individual was hired for, if provided.
- LWDB/Region—This field should be pre-populated with the staff-assigned Board area
- Office Location—Select the office that Workforce Solutions Office staff is assigned to from the drop-down menu.
- Position—This field should be pre-populated to the assigned privilege group for each Workforce Solutions Office staff. In cases where this field is not pre-populated, select the appropriate group from the drop-down menu.

Boards must be aware that Workforce Solutions Office staff actions are saved in the WorkInTexas.com system. When activities, including services, are saved, WorkInTexas.com records Workforce Solutions Office staff names as well as dates and times associated with all actions.

Boards must be aware that this information is automatically transmitted to The Workforce Information System of Texas (TWIST) upon entry, with no additional Workforce Solutions Office staff action required.

Part C – Services to Employers

C-100: EMPLOYER SERVICES

State law requires that Local Workforce Development Boards (Boards) establish an employer services component as an integral part of the local workforce system. As part of the Texas workforce system, Boards must establish and maintain an effective working relationship with their local business community. Employer services are a critical link between workforce services and employer needs.

Each Board must establish a process that meets the needs of its local businesses. Boards must direct employer services toward the following:

- Promoting the use of the full range of Texas workforce system services and facilities
- Identifying the specific employment needs of individual employers, and providing the appropriate solutions available through the Texas workforce system
- Providing recruitment and placement assistance
- Obtaining and maintaining current information from local employers concerning the following:
 - Labor needs
 - Employment and training opportunities
 - Other information to use in providing services to employers and job seekers

Employer services provided at Workforce Solutions Offices include the following:

- Outreach to promote using Workforce Solutions Office facilities and services
- Entry, review, and maintenance of job orders in WorkInTexas.com
- Making contacts and filling job orders
- Specialized testing
- WorkInTexas.com technical assistance
- Recruitment assistance
- Information on employment-related issues
- Employer training services
- Rapid response to mass layoffs and permanent facility, store, enterprise, or plant closures
- Agricultural clearance
- Work Opportunity Tax Credit (WOTC)

For information and technical assistance on identifying employers that need help finding and retaining qualified employees and would benefit from enhanced engagement with the Texas workforce system, see [TA Bulletin 239](#), issued September 26, 2011, entitled “Developing an Employer Services Plan,” and subsequent updates.

C-200: EMPLOYER ACCESS TO SYSTEMS & SERVICES

C-201: Employer Access

For the purposes of ES, an employer is defined by the US Department of Labor (DOL) ([20 Code of Regulations \(CFR\) §651.10](#)) as follows:

A person, firm, corporation, or other association or organization (1) that currently has a location within the United States to which US workers may be referred for employment and that proposes to employ a worker at a place within the United States and (2) that has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises, and otherwise controls the work of such employee. An association of employers shall be considered an employer if it has all of the indications of an employer set forth in this definition. Such an association, however, shall be considered as a joint employer with the employer member if either share in exercising one or more of the definitional indications.

Note: Federal contractors associated with the military as employers are considered employers, even if the jobs are located outside the United States.

Boards must ensure that appropriate staff follows the employer approval process outlined below prior to entering into any cooperative agreement to provide employer services, including:

- Employer outreach (in person or by telephone)
- Workforce Solutions Office orientation
- Employer site recruiting
- Interview rooms
- Job fairs
- Customized employer training

Boards must be aware that to self-register a new employer account in WorkInTexas.com, an entity must have both of the following:

- State tax account number
- Federal Employer Identification Number (FEIN) related to that tax account number

Boards must ensure that Workforce Solutions Office staff with access to the mainframe system through the Resource Access Control Facility (RACF) provide employers with their tax account number and FEIN upon request—but only after confirming the employer’s identity.

C-202: Approval of New Employer Accounts

Boards must be aware that entities that do not have both of the above items necessary to self-register with WorkInTexas.com will be:

- Unable to access the system at that time
- Directed to contact a Workforce Solutions Office for assistance with account registration

When an entity without a state tax account number and FEIN wishes to post a job opening in WorkInTexas.com, Boards must ensure that appropriate staff approves the new employer account if the entity does the following:

- Meets the definition of employer as set forth in [20 CFR §651.10](#)
- Agrees to comply with the job order requirements in the [Employer Use Agreement](#) available on TWC's intranet site [at https://intra.twc.texas.gov/intranet/gl/docs/twn-028.doc](https://intra.twc.texas.gov/intranet/gl/docs/twn-028.doc).

When screening a potential new employer, it is important to perform due diligence by following through on extra steps and asking additional questions to verify the eligibility of an entity.

To locate a possible preexisting account, staff first conducts an employer name search, which helps to eliminate duplicate employer accounts in WorkInTexas.com.

Note: The presence of a preexisting WorkInTexas.com account does not guarantee an entity's legitimacy.

If an entity meets the above criteria, Boards must ensure that appropriate staff provides assistance through the following:

- Establishing a WorkInTexas.com employer account for the new employer
- Offering assistance with entering job orders
- Providing the employer with workforce services, as appropriate

Boards must ensure that only employers that have paid wages and request to establish a tax account number are referred to the [Unemployment Tax Registration page](#).

When an out-of-state employer wishes to post a job in WorkInTexas.com, Boards must ensure the following:

- If the job is in Texas, appropriate staff follows the same procedures used for Texas employers that do not have a tax account number and FEIN.
- If the job is out-of-state, appropriate staff refers the out-of-state employer to the ES agency in the employer's home state. Staff may use the [Workforce Development Board Finder](#) to find locations throughout the nation.

If the employer wishes to post farm work or food-processing jobs—regardless of the state in which the employer operates—Boards must ensure that appropriate staff directs the employer to the Texas Workforce Commission’s (TWC) [Foreign Labor Unit](#).

C-203: Ineligible Employers and Entities

WorkInTexas.com is the state labor exchange system designed to facilitate job matching between employers and job seeking individuals.

Boards must be aware that an employer or entity can be determined **ineligible** for a new or existing employer account in WorkInTexas.com. An entity may be deemed ineligible if the employer or entity:

- is an independent contractor;
- is not an employer of record (no bona fide employer-employee relationship);
- offers business opportunities, not jobs;
- is a multilevel marketing group;
- seeks to hire replacement workers during a labor dispute; or
- charges a referral or application fee.

If an employer or entity is determined to be ineligible to use WorkInTexas.com, Boards must ensure that appropriate staff members do the following:

- Clearly communicate the reasons for ineligibility to the entity
- Document the conversation and outcome using employer Case Notes in WorkInTexas.com, as follows:
 - For new employers that are determined ineligible before registration, document the conversation and outcome in the Case Notes attached to the Ineligible Employers and Entities account (Employer Site ID 1217527).
 - For existing employer accounts that are determined ineligible after registration, document the conversation and outcome in the Case Notes attached to the existing employer account, as well as the Case Notes attached to the Ineligible Employers and Entities account (Employer Site ID 1217527).

Staff can find additional tools and detailed information to help determine whether an employing entity should be granted access to WorkInTexas.com in the appendixes to this guide.

- [Appendix A: Employer-Employee Relationship Flowchart](#)
- [Appendix B: Employer Definitions for Use with WorkInTexas.com](#)
- [Appendix C: Entity Authentication Resources](#)

C-204: Discontinuation of Services to Employers

Boards must be aware that services to employers can be discontinued if employers:

- refuse to alter or withdraw job orders containing specifications that are contrary to employment-related laws;
- refuse to provide assurances that the jobs offered are in compliance with employment-related laws;
- are found, through random, unannounced field checks to agricultural work sites conducted by integrated service area manager staff or otherwise, to have either misrepresented the terms or conditions of employment specified on agricultural intra/interstate job orders or failed to comply with assurances made on job orders;
- are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws, and notification of this final determination has been provided to TWC by that enforcement agency;
- are found by TWC to have violated ES regulations set forth in 20 CFR §658.416(d)(4);
- refuse to accept qualified workers referred through the interstate clearance system; and/or
- refuse to cooperate in agricultural work site visits conducted as set forth in 20 CFR §653.503.

Employers, as defined in [20 CFR §651.10](#), are required to adhere to the following established criteria when using WorkInTexas.com. Violations of these policies may result in the loss of access to privileges.

- Job orders must be valid, describe an immediate opening, and provide a detailed job description. *Note:* Multilevel Marketing, Business Opportunities, or Contract Bids (Requests for Proposals [RFPs]) are not considered valid or immediate openings.
- Orders cannot contain material that is obscene, scandalous, inflammatory, pornographic, profane, unlawful, threatening, libelous, defamatory, or otherwise inappropriate.
- Race, creed, color, gender, age, religion, disability status, or national origin must not be used to deny employment to any job seeker.
- Job seekers must not be charged a fee to access a job or as a condition of accepting a job. Usual and customary licensing fees or certifications, such as a real estate broker's license are acceptable. Application fees, purchasing kits, and work-from-home plans are not acceptable.

In any of the above situations, Boards must document the following information in the employer's Case Notes in WorkInTexas.com and make an effort to connect with the employer to address the situation:

- WorkInTexas.com employer identification number
- Employer name and location
- Date the job order was submitted

- Job order identification number
- Brief description of the problem or situation
- Brief description of the Board's efforts to address the situation

If the employer is unwilling or a Board is unable to address the situation, the Board must send a discontinuation of services request to TWC's Workforce Systems Support Desk (see B-202c). In addition to the information listed above, this request must include a summary of the employer's violations of ES regulations and how the Board has addressed the situation.

Boards must be aware that TWC will initiate procedures for discontinuation of services in accordance with [20 CFR, Part 658, Subpart F](#), when the decision is based on one of the above violations.

Boards must be aware that TWC will do the following:

- Advise Boards of the outcome of any investigation and what action should be taken, including the discontinuation or reinstatement of the provision of services
- Expect the Board to notify the employer of such action

C-300: JOB ORDERS IN WORKINTEXAS.COM

C-301: General Information

WorkInTexas.com gives employers access to the largest database of job seekers in Texas. Employers can enter, update, and archive job orders securely.

Boards must be aware of the following:

When entering job orders in WorkInTexas.com, employers may:

- specify job qualifications based on skills and experience;
- conduct a search of the job seeker database for matches based on job qualifications;
- view résumés and contact job seekers immediately;
- receive email notification of matches;
- receive a list of qualified job seekers; and
- access labor market information.

The WorkInTexas.com job seeker database includes everyone from skilled professionals to temporary laborers. The system allows for quick viewing of a list of skills and qualifications for each job seeker. Interested employers also can access job seeker contact information.

Workforce Solutions Office staff can access both employer job orders and individual job seeker accounts entered into WorkInTexas.com.

Employers can post their own jobs or provide job order information to Workforce Solutions Office staff for the matching and referral of qualified job seekers. The job order information allows Workforce Solutions Office staff to do the following:

- Evaluate the employer's hiring requirements and determine whether those requirements are legal and related to job performance
- Evaluate the job seeker's qualifications

A WorkInTexas.com job order includes the following information:

- Job Order Number – system-assigned unique number
- Job Title and Occupation – includes position title, selected occupation code, and employer job ID, if entered
- Location – Select job location.
- Contact – Select employer contact assigned to job order.
- Job Order Information to be Displayed Online – allows selection of confidential information

- Job Details – includes number of positions, number of allowed applicants, job type, and job order display date options
- Job Description – Description may be entered or selected from default provided based on selected occupation code. (See C-601: Recruitment Assistance.)
Note: The job order must not contain subjective remarks and personal judgments unrelated to job performance.
- Skills – includes skills, technology, or tools identified for this role
- Other Skills – Enter other specialized skills including detailed information on degrees or certifications required.
- Hiring Requirements – includes preemployment checks or testing if required
- Specialized Requirements – includes language, typing speed, and security clearance requirements, if applicable
- Minimum Education, Experience, and Age Requirements – includes minimum education, experience, presence of licensure requirement, and age [if a bona fide occupational qualification (BFOQ)]
- Transportation Requirements – includes driver’s license requirement and public transit access at work site
- Compensation and Hours – includes pay and workweek information
- Benefits Offered – includes benefit details, if applicable
- Job Application Methods Accepted – includes application method, website address, and application process, if entered
- Job Applicant Information Needed – applicant information required by employer
- Application Question Set – optional employer questions
- Applicant Notification Method – optional system notification for employer
- Job Order Upload Options – optional external jobsites to share job order with
- Other Information – includes information about possible federal contractor status, or other federal program information connected to employer or worksite
- Staff Information – includes job order status, exclusion status, Case Notes, and other special information related to Workforce Solutions Office staff, as applicable

Note: When an employer’s job order is provided to job seekers through the referral process, Boards must ensure that Workforce Solutions Office staff does the following:

- Reviews the job order to ensure that the individual meets the job order requirements before making a referral or providing any other staff-directed activity
- Reviews the job order for illegal or discriminatory questions or statements
- Directs concerns regarding potentially illegal or discriminatory statements in an employer’s job order to the Board’s Equal Opportunity officer for review and determination

C-302: Job Orders in Local Workforce Areas Served by Other Workforce Solutions Offices

Boards must be aware that Workforce Solutions Office staff sometimes receives job order requests that:

- are from an employer located in a local workforce development area (workforce area) served by another Workforce Solutions Office
- specify the work is to be performed in another workforce area
- recruit workers from another workforce area

In these cases, Boards must ensure the following:

- Workforce Solutions Office staff encourages the employer to contact a Workforce Solutions Office that is in the workforce area in which the work site is located to facilitate coordination between the employer and that Workforce Solutions Office
- If the employer insists on listing the job order at a Workforce Solutions Office that does not serve the workforce area in which the work site is located, Workforce Solutions Office staff notifies staff at a Workforce Solutions Office that does serve that workforce area of the job order either by telephone or email.
- Workforce Solutions Office staff enters accurate requirements for these job orders, including associating each job order with appropriate work locations.

C-303: Job Order Maintenance

Boards must establish procedures for updating job orders and updating the status of a contact.

It is recommended that the process allow information to be shared and job order activity and responsibility to be coordinated with the Business Services Unit, ES staff, Texas Veterans Commission staff, and other Workforce Solutions Office staff.

Boards must ensure that appropriate Workforce Solutions Office staff reviews new job orders manually entered by preferred employers in WorkInTexas.com on a daily basis to ensure that the job orders:

- are associated with valid employer accounts; and
- contain:
 - descriptions of immediate openings
 - correct occupational categories
 - appropriate job requirements

- documentation of the employer's claim of a bona fide occupational qualification (BFOQ)
- Complete descriptions of the terms and conditions of employment (for example, drug screening, proficiency tests or assessments, credit checks)
- Do not contain the following:
 - Violations of state or federal laws, including equal employment opportunity, child labor, and minimum wage laws
 - Union or nonunion specifications
 - Openings for jobs vacated as a result of a strike or lockout
 - Openings for business opportunities or contract bids (RFPs)
 - Recruitments for training
 - Discriminatory remarks or improper conditions
 - Inappropriate language
 - Requirements that the job seeker provide credit card or bank account information in order to apply
 - Fees charged to the job seeker in order to apply for or fill the job

Boards must ensure that, after reviewing new job orders, designated staff does the following:

- Contacts the employer before making any modifications to a job order, including modifications to the number of job openings within a job order
- Places the job order on hold until the employer is contacted, if employer contact is necessary

Boards may determine whether designated staff needs supervisory approval to modify a job order after an employer requests or agrees to modifications.

Boards must ensure that designated staff does not delete, cancel, or modify a job order—including modifying the number of job openings within the job order—if the following is true:

- The employer does not wish to modify the job order
- The job order meets the requirements set forth in this guide

Boards must be aware that WorkInTexas.com job orders cannot be deleted once an individual has applied for the job through WorkInTexas.com.

Boards must ensure that Workforce Solutions Office staff does the following:

- Enters all hires (if applicable)
- Closes job orders in a timely manner using WorkInTexas.com
- Contacts the workforce area's WorkInTexas.com liaison for instructions on the following:
 - Running job matches
 - Conducting real-time job searches
 - Entering employer services

- Entering hires
- Maintaining job orders
- Generating reports

Boards must be aware of the following:

- Building a good relationship with an employer requires keeping the employer informed about the status of its job orders—from the time Workforce Solutions Office staff receives the job order until it is filled or canceled
- Follow-up contact with employers during the job-filling process ensures that Workforce Solutions Office staff has current and accurate information about job orders, including the following:
 - Whether information provided is complete, the occupation entered is correct, job requirements are included, or job seekers meet the minimum qualifications
 - Whether a sufficient number of qualified job seekers have applied
 - Whether the position has been filled
 - The name of the job seeker hired and the start date

Boards also must ensure that the Case Notes associated with the employer account in WorkInTexas.com are used to document any relevant information, including conversations between Workforce Solutions Office staff and the employer about a job order.

Boards must ensure that appropriate staff uses the Case Notes page only for the following:

- Employer or job order management entries, such as the following:
 - Supervisory instructions
 - Notes related to changes to job orders
 - Records of changes to or discussion with employer contacts
 - Notations of employer exceptions to quality referral/contact standards
- Job order status (for example, long periods on hold, special searches/referrals, feedback regarding quality of referrals)

Boards must be aware that discussions and information obtained from employers are sensitive. Certain information is confidential under law and will be disclosed only in compliance with [Texas Labor Code §301.085](#), TWC guidelines, and the Public Information Act.

C-304: National Labor Exchange Job Orders in WorkInTexas.com

WorkInTexas.com, the state labor exchange, and USNLX.com, the National Labor Exchange, continue to work together to increase the number of job orders available to job seekers and to introduce WorkInTexas.com to employers that may not have previously used the system.

The National Labor Exchange continues to upload job orders to WorkInTexas.com nightly and these jobs can be found in WorkInTexas.com when searching for job orders by checking the National Labor Exchange as the source.

C-400: JOB ORDERS THAT VIOLATE FEDERAL OR STATE LAW

C-401: About Job Orders That Violate Federal or State Law

Boards must be aware that job orders that include certain types of hiring criteria may violate federal or state law. These typically include job orders as follows:

- have union or nonunion specifications;
- predesignate the job seeker to be referred;
- contain discriminatory specifications or have citizenship specifications;
- involve a fee to the job seeker for filling a job;
- violate child labor laws by allowing youth (ages 14–17) to be referred;
- are below the prevailing wage or are substandard job orders; and
- fill a job vacated due to a strike or lockout.

C-402: Union or Nonunion Specifications

Boards must be aware that job orders specifying membership or non-membership in a labor organization as a condition of employment may violate federal or state law.

Unions and labor organizations are subject to Texas Right to Work laws, which make a job order illegal if there is an agreement between an employer and a union that requires union membership immediately or after a certain period of time. An agreement that requires individuals to pay union membership dues even if they are not members also is illegal.

The Texas Right to Work Law does not apply to the following:

- A railroad or “carrier,” as defined in the Railway Labor Act
- A federal enclave or any type of federal installation
- Work performed outside the state of Texas

For additional information, refer to the following:

- [Texas Labor Code, Chapter 101, Labor Organizations](#)
- [Texas Business and Commerce Code, Title 2, §15.05\(e\)\(1\)–\(2\)](#)
- [National Labor Relations Act, 29 United States Code \(USC\), Chapter 7, Subchapter II, §158\(a\)\(3\) and §164\(b\)](#)

C-403: Predesignating the Job Seeker

Boards must ensure that Workforce Solutions Office staff does not take action on a job order in which the employer requests that Workforce Solutions Office staff refers a certain job seeker. The only exceptions to this are agricultural and agricultural-related job orders for a specific crew leader or worker ([20 Code of Federal Regulations Part 651](#)).

C-404: Discriminatory Specifications

Boards must be aware that federal law and Employment Service policies prohibit selecting and referring job seekers on the basis of any discriminatory specifications. This includes job orders with a citizenship requirement, unless specifications are based on a legal requirement for workers in certain jobs or situations. (Many jobs in federal, state, county, and municipal service are by law available only to US citizens.)

C-405: Charge for Filling a Job

Boards must ensure that Workforce Solutions Office staff does not take action to fill a job order that would result in a placement fee for bringing the job seeker and employer together. However, there are certain acceptable preemployment costs to the job seeker, such as:

- A physical examination (under Americans with Disabilities Act guidelines, this examination may only be performed after an offer of employment is made)
- Usual and customary licensing fees or certifications

In these instances, Boards must ensure the following:

- The cost is reasonable and customary for that workforce area
- The fee has supervisor/manager approval
- The information regarding the preemployment cost is specific and listed in the job order
- The details of the cost are reviewed with the job seeker before contact with the employer

Note: Application fees, purchasing kits, and work-from-home plans are not acceptable.

C-406: Referring Youth

Boards must ensure that Workforce Solutions Office staff makes all youth job order contacts in accordance with federal and state laws relating to school attendance and child labor standards. [See [Texas Labor Code, Chapter 51 \(Texas Child Labor Law\)](#).]

C-407: Substandard Job Orders

Boards must ensure that Workforce Solutions Office staff does not call in or refer job seekers on substandard job orders that offer wages, hours, or working conditions that are substantially less favorable to the job seeker than those existing for similar work in the area. If discussion with the employer fails to result in a change to the job order, Boards must ensure that Workforce Solutions Office staff does the following:

- Informs the employer that:
 - The job order is substandard in comparison with previous job orders for similar jobs in WorkInTexas.com
 - There is a limited chance of the opening being filled
- Refers the job order to the appropriate supervisor/manager to ensure that uniform decisions are made

C-408: 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. Each Board must designate a local workforce/unemployment insurance (WF/UI) coordinator to be responsible for communicating with the state WF/UI coordinator when Workforce Solutions Office staff becomes aware of a labor dispute.

To notify DOL, and to prevent any job referrals on job orders impacted by a labor dispute, Boards must ensure that local WF/UI coordinators follow the steps below when a labor dispute affects a job order:

1. Verify the existence of the labor dispute, when Board or Workforce Solutions Office staff becomes aware of a labor dispute that involves a work stoppage
2. Place any current job orders for the affected vacancies in “hold” status
3. Determine whether the labor dispute impacts any other vacancies posted in WorkInTexas.com, and if so, place those vacancies in “hold” status
4. Notify the state WF/UI coordinator of the labor dispute using the [Report of Labor-Management Disagreement form \(WF-41\)](#)

Boards must be aware that the state WF/UI coordinator will forward the information to the DOL Regional Office.

Additionally, Boards must be aware that TWC staff will lock the employer’s account if there are any affected job orders, and the employer will be unable to access his or her WorkInTexas.com account. (However, Workforce Solutions Office staff will be able to access the employer’s account.)

Boards also must ensure the following:

- The employer is notified that WorkInTexas.com may not list a job order for vacancies affected by the labor dispute.
- Workforce Solutions Office staff assists the employer, if requested, in listing job orders for vacancies that are not related to the labor dispute.

Further, Boards must ensure that Workforce Solutions Office staff does not make job contacts (referrals) on job orders or job develop job seekers in a manner—with contacts to temporary help firms, PEOs or staff leasing companies—that would aid directly or indirectly in filling a job opening that is vacant because of the following:

- The former occupant is on strike.
- The former occupant is being locked out in the course of a labor dispute.
- The job opening is otherwise at issue in a labor dispute involving work stoppage.

Boards must ensure that Workforce Solutions Office staff does the following:

- Provides to all job seekers referred to jobs not at issue in a labor dispute the [Job Seeker Notice of Labor Dispute form \(E-12\)](#), which explains the following:
 - A labor dispute exists in the employing establishment.
 - The job opening to which the job seeker was referred is not at issue in the dispute.
- Retains a signed copy of the Job Seeker Notice of Labor Dispute form

Boards must ensure that Workforce Solutions Office staff does not accept or work existing job orders from temporary help firms, staff leasing companies, or PEOs for positions at issue in a labor dispute.

Boards must be aware that, if TWC becomes aware of a labor dispute before the Board, the state WF/UI coordinator will do the following:

- Verify the existence of the labor dispute
- Notify all appropriate local WF/UI coordinators of the labor dispute and which occupations are affected

Form E-12, Job Seeker Notice of Labor Dispute, and Form WF-41, Report of Labor-Management Disagreement, are available on TWC's intranet under [Employment Services Forms](#) (The intranet is not available to the public.)

C-409: Employment Scams

Boards must be aware of the potential for fraudulent employment scams in WorkInTexas.com, disguised as legitimate employer-posted job opportunities that are usually entered by self-service users. Boards must be diligent in their review of all new job orders, looking for indicators of potentially fraudulent activity. Indicators include, but are not limited to, employers or orders that do the following:

- Require a job seeker to create an Instant Message account to conduct an interview
- Require a job seeker to provide bank account/check routing information before starting work
- Require a job seeker to cash a check from the employer before starting work
- Require a job seeker to contact the employer at an email address from a free email provider, such as Gmail, Yahoo, AOL
- Require a job seeker to submit any kind of payment for equipment, licenses, certifications, starter kits, software packages, etc., before starting work or before the employer's legitimacy has been validated
- Claim to hire a job seeker sight unseen or without validating credentials

C-500: SPECIAL TYPES OF JOB ORDERS

C-501: About Special Types of Job Orders

Boards must be aware that several special types of job orders require specific selection and referral procedures to ensure federal and state laws and TWC rules and policies are followed. These job orders include the following:

- Affirmative action job orders
- Job orders from temporary help firms and PEOs
- Federal contractor job listings
- Military recruiting job orders
- On-the-job training job orders
- Job orders with a BFOQ

C-502: Affirmative Action Job Orders

Boards must be aware that some job openings are mandated by written notification to allow an employer to recruit in specific categories (for example, women only or Hispanics only). In some cases, DOL's Office of Federal Contract Compliance Programs has reviewed the hiring patterns of the employer in question and found that the employer needs to increase recruitment for employees in specific categories.

Boards must ensure the following:

- Workforce Solutions Office staff does not enter an affirmative action job order unless the employer supplies a copy of the federal letters or documents requiring that type of recruitment.
- Such information is retained for a minimum of three years.

For employers that are not under an affirmative action mandate and that express an interest in recruiting from certain targeted populations in order to improve the demographics of their companies, Boards must ensure that Workforce Solutions Office staff does the following:

- Informs the employer that job seekers cannot be referred exclusively from targeted populations
- Assures the employer that any qualified individuals from targeted populations will be referred

C-503: Job Orders from Temporary Help Firms & Professional Employer Organizations

Temporary help firms employ workers and assign them to client companies to support or supplement the customer's workforce during employee absences, temporary skills shortages, seasonal workloads, special assignments and projects, and other similar work situations. A temporary help firm is the employer of record for workers provided to its customers.

A PEO provides services to a customer company, such as employee benefits management, payroll and workers' compensation, recruiting, risk/safety management and training and development. Businesses that provide professional employer services in Texas must be licensed by the Texas Department of Licensing and Regulation (TDLR). A licensed PEO is the employer of record for workers provided to its customers.

Boards must ensure that when PEOs request access to WorkInTexas.com, staff does not approve connections to employer accounts without approval of Primary Employer Contact(s). Appropriate staff must check with the [Texas Department of Licensing and Regulation](#) (TDLR) to ensure that the PEO has been licensed before staff approval of PEO access to WorkInTexas.com.

Boards must also be aware that PEOs do not have functional capabilities to add new job orders in WorkInTexas.com. The PEO connection to an employer account is primarily related to the PEO's management of various tasks associated with the Tax ID on behalf of the employer.

Boards must ensure that when a third-party agent (TPA) requests access to WorkInTexas.com to add new job orders on behalf of an employer, staff does not approve connections to employer accounts without the approval of the Primary Employer Contact(s). Once the employer contact has approved the TPA's access to the account, the TPA can add, edit, manage, and recruit for any of the job orders associated with the employer account.

Boards must be aware that employer contacts with appropriate privileges in WorkInTexas.com may approve PEO and/or TPA access to their accounts without staff assistance.

Boards must ensure that Workforce Solutions Office staff accepts job orders from temporary help firms and PEOs provided the following:

- The PEO is licensed by TDLR.
- They have a current and available job vacancy with their customer employer.
- The temporary help firm or PEO will not charge the job seeker a fee to secure or keep the job.

Boards must ensure that Workforce Solutions Office staff advises job seekers who are referred on these job orders—including unemployment claimants—that the positions are being filled

through a temporary help firm or PEO. Staff must also advise job seekers that unemployment benefits may be denied if the worker does not follow the written procedures established by the temporary help firm or PEO on reporting for reassignment when an assignment to a customer is concluded.

For additional information, refer to the following:

- [Texas Labor Code, Chapter 91, Professional Employer Organizations](#)
- Texas Workforce Commission Unemployment Insurance rule §815.133, Professional Employer Organizations and Temporary Help Firms
- [TDLR License Data Search, License Type: Professional Employer Organization](#)

C-504: Federal Contractor Job Listings Job Orders

The affirmative action provision of the [Vietnam Era Veterans' Readjustment Act of 1972 \(VEVRAA\)](#) requires employers (and their subcontractors) with government contracts of \$100,000 or more to list their job openings with the state labor exchange system (WorkInTexas.com). These Federal Contractor Job Listings (FCJL) job orders provide protected veterans with priority referrals to such jobs. The Office of Federal Contract Compliance Programs is responsible for ensuring compliance.

WorkInTexas.com can help federal contractors comply with many of the requirements of VEVRAA and Section 503 of the Rehabilitation Act. For more information, see [How WorkInTexas.com Helps Federal Contractors Comply with OFCCP's Final Rules on VEVRAA and Section B-503](#).

When entering a new job order in WorkInTexas.com, Boards must ensure that appropriate staff indicates whether it is an FCJL job order. To find an FCJL job, go to Job Search Criteria – Advanced Search. – Select “Yes” for Federal Contractor from the Preferred Employer Criteria section.

C-505: Military Recruiting Job Orders

Boards are encouraged to develop local partnerships with military recruiters to do the following:

- Develop WorkInTexas.com job orders for specific active and reserve component military occupations
- Refer job seekers who indicate an interest in military service to local military recruiting offices
- Provide recruiters with an active presence in Workforce Solutions Offices to include periodic on-site recruitment opportunities and space for recruiting materials, such as brochures

C-506: On-the-Job Training Job Orders

Boards must be aware that, when Workforce Solutions Office staff refers an individual to an employer for on-the-job training (OJT), a job order may be entered in WorkInTexas.com only if the following occur:

- The individual is a WIOA participant and has been determined eligible for this type of training.
- The individual will participate in training as an employee and will receive wages and benefits as a current employee.
- The job order is designated as an OJT order in the Job Description section of WorkInTexas.com.
- The Staff Information - Category section of the job order identifies it as “WIOA/OJT.”

C-507: Job Orders with a Bona Fide Occupational Qualification

A BFOQ is a qualification based on age, sex, national origin, or religion that is necessary to the individual’s ability to perform the job in question.

Except as stated in [42 United States Code §2000\(e\)](#)–2(e) and in [29 Code of Federal Regulations, Parts 1604, 1605, 1606](#) and [1625](#), Boards must ensure that discriminatory job orders that specify referrals are to be made on the basis of age, sex, religion, or national origin are not accepted.

A characteristic may be a BFOQ only if there has been a specific court ruling or the employer has received such a determination from the Equal Employment Opportunity Commission (EEOC). Boards must ensure that, if an employer claims a BFOQ, appropriate staff does the following:

- Consults with management before including the BFOQ on a job order
- Indicates the BFOQ status of the Job Order using Case Notes associated with the employer account

C-600: RECRUITMENT ASSISTANCE

C-601: About Recruitment Assistance

Boards must be aware that in addition to assistance with job orders, recruitment assistance can be provided to employers, including the following:

- Assistance with making contacts and filling job orders
- Provision of interview rooms
- Job fair assistance
- Specialized testing
- On-site staffing assistance
- Labor market information

Boards must ensure that before providing an employer with workforce services, Workforce Solutions Office staff verifies that the employer has an account in WorkInTexas.com or is eligible to establish an account in WorkInTexas.com. See [C-200: Employer Access to Systems and Services](#).

C-602: Making Contacts and Filling Job Orders

Boards must be aware that after an employer enters a job order in WorkInTexas.com, the process of searching for qualified job seekers to refer to the employer begins. Job seekers registered in WorkInTexas.com are a primary source of qualified job seekers. Instructions for conducting automated searches for qualified job seekers are in the WorkInTexas.com User Guide.

Boards must ensure that Workforce Solutions Office staff adheres to the following guidelines in the referral and placement process:

- Give eligible veterans priority over all other equally qualified individuals in the receipt of services funded in whole or in part by the US Department of Labor, in accordance with 38 United States Code §4215. This process is automated in WorkInTexas.com during the two-day veterans hold.
- Give eligible veterans priority over all other equally qualified individuals in the receipt of employment assistance or job training services funded in whole or in part by state funds, in accordance with [Texas Labor Code, Chapter 302, Subchapter G](#).
- Give eligible foster youth priority over all other equally qualified individuals except eligible veterans in the receipt of federal- and state-funded services.
- Do not extend referral preference to any job seeker or group of job seekers, except in accordance with legal requirements, such as veterans' priority (20 CFR §652.8).

- Ensure that only job seekers suitably qualified for job openings are referred to employers. Referring an unqualified job seeker to an employer is a disservice to both the employer and the job seeker and is disrespectful of their time. Failure to screen job seekers according to the employer's specifications results in the loss of the employer's confidence and eventually compels the employer to seek assistance elsewhere.
- When referring job seekers to an employing establishment where a labor dispute exists, provide the Job Seeker Notice of Labor Dispute form (E-12) to the job seeker indicating that such dispute exists and that the position to which the job seeker is being referred is not at issue in the dispute (20 CFR, Chapter V, Part 652.9).
- Do not make a job order contact to a position where the services to be performed or the terms or conditions of employment violate federal or state law. Such orders must be put on hold.
- Do not actively recruit for employment if the wages, hours, or other conditions of work offered are substantially less favorable to the individual than those existing for similar work in the workforce area.
- Search the job seeker's registration for occupational experience similar to that of the job order. If this approach fails, extend the search to include related occupations.
- When possible, refer job seekers to job orders that use their highest skills.
- Enter all job order contacts/referrals in WorkInTexas.com at the time the referral is made. However, discuss the job opening with the job seeker to ensure the terms and conditions of the job are acceptable (job location, wages, benefits, work hours, duration, working conditions, or opportunity for advancement) before the contact/referral is entered in WorkInTexas.com.

Success in filling an employer's job order depends on the ability of Workforce Solutions Office staff to locate qualified job seekers who are acceptable to the employer and to whom the job is acceptable. It is recommended that Boards formulate a plan for locating suitable job seekers as quickly as possible.

C-602.a: Definition of Job Development

A Job Development occurs when Workforce Solutions Office staff contact an employer and secures a referral to that employer on behalf of a specific job seeker who possesses skills sought by the employer, and for whom there is no suitable job posted from that employer in WorkInTexas.com.

For purposes of job development, a Referral is described as one of the following:

- An interview between the job seeker and the employer
- The agreement of the employer to accept the job seeker's résumé or application

Boards must be aware that under the definition, the presence of a job development service on a job seeker's service record must reflect receipt of a positive response—in the form of a referral—from the employer contacted in the job development service.

Boards also must be aware that all WorkInTexas.com job seeker service definitions are shared with The Workforce Information System of Texas (TWIST). TWIST automatically reflects changes to WorkInTexas.com job seeker service definitions.

Boards must be aware that the following do not count as job development services:

- While talking with a job seeker, staff discovers that the job seeker is working and asks for the job seeker's start date and the name of the employer.
- Staff searches other job search websites (for example, Monster, CareerBuilder) and finds a job for a job seeker.
- Staff notes a job order in Sunday's classified ads. While talking to a job seeker, the job seeker indicates an interest in this type of job. Staff gives the job seeker a copy of the ad.
- At a local mall, staff sees a Now Hiring sign in a store window and tells a job seeker to go to the store and apply.
- An employer schedules a job fair at a Workforce Solutions Office. During the job fair, staff obtains a list of the job seekers who spoke with the employer.
- Staff receives a hired list from an employer but cannot find a matching job order for this employer or a contact listing in WorkInTexas.com.
- Staff uses the mainframe's wage records to confirm that a job seeker is receiving wages, but no contact listing exists in WorkInTexas.com for the employer.

Boards must ensure that if a pattern of job developments to the same employer emerges—but the employer is not order jobs in WorkInTexas.com—Workforce Solutions Office staff consults with the employer to determine if a job order is appropriate.

C-602.b: Definition of Hire

A hire is the employing of a job seeker by an employer as a direct result of a contact (referral) or job development made through and documented in WorkInTexas.com.

Additional information on hires is available at the following:

- [20 CFR §651.10](#)
- [TA Bulletin 210](#), issued August 19, 2009, and titled "Recording Hires in WorkInTexas.com," and subsequent updates

C-602.c: Hire Validation

Boards must ensure that Workforce Solutions Office managers and appropriate supervisors perform random verifications on hires and services recorded in WorkInTexas.com. This method helps managers and appropriate supervisors determine customer satisfaction with job seeker referrals and other Workforce Solutions Office services.

Hire validation can be accomplished by calling the employer to verify employment status (that the individual did go to work, not that the individual is necessarily still working there), calling the job seeker, or verifying wages using the TWC Wage Record Inquiry function.

C-603: Provision of Interview Rooms

Boards must ensure that, on request and availability, Workforce Solutions Office staff provides employers with suitable accommodations at Workforce Solutions Offices for conducting interviews and testing job seekers. This is a critical service for employers because:

- Workforce Solutions Office staff can assist with screening and setting appointments
- Workforce Solutions Office staff can assist with preliminary testing, as described in [C-605: Specialized Testing](#)
- Job seekers are familiar with the location of the Workforce Solutions Office and, in many cases, public transportation is available
- A jobsite may be under construction
- A jobsite may lack appropriate office space and equipment

C-604: Job Fair Assistance

A job fair is a gathering of multiple employers for the purpose of taking applications, interviewing and making contact with potential job seekers to fill current job openings. One employer with multiple positions is not a job fair, but is considered a hiring event, application session, or hiring fair.

Job fairs accomplish the following:

- Provide a central location for job seekers to complete multiple applications
- Allow for quick and efficient mass hiring
- Encourage networking among job seekers and employers
- Advertise multiple openings throughout the workforce area
- Provide an important job matching service to job seekers and employers
- Promote Workforce Solutions Office services in the community

Boards may assist employers with local job fairs, and also may plan and conduct job fairs for area employers.

Boards must be aware that an employer service for JF – (JF) Job Fair can be entered into WorkInTexas.com only if the following occur:

- The employer attends a Board-sponsored job fair
or
- The Board cosponsors the job fair and performs one of the following activities:
 - Secures or helps with venue setup
 - Assists with registering job fair attendees (job seekers)
 - Staffs the booth for employer breaks, and so forth.

Boards also must be aware that a job fair employer service can be entered into WorkInTexas.com only after an employer has participated in the job fair. To document preplanning activities such as recruiting and registering employers, Boards must ensure that Workforce Solutions Office staff uses one of the Employer Outreach services in WorkInTexas.com and enters the employer's request to participate in the Case Notes associated with the employer's account.

For additional information on job fairs, see [TA Bulletin 192, Change 1](#), issued December 12, 2011, entitled "Job Fairs—Update," and subsequent updates.

C-605: Specialized Testing

Many tools and techniques are available for evaluating a job seeker's occupational skills, aptitudes, achievement levels, and interests. Testing is a valuable service available to employers as needed (for example, when making employment decisions such as hiring, promotion, referral, and retention).

It is recommended that Boards do the following:

- Only use test instruments, for job selection and referral purposes, that meet [EEOC's Uniform Guidelines on Employee Selection Procedures](#) (41 CFR Part 60-3)
- Become familiar with the guidelines before purchasing commercially developed tests

If commercially developed tests are used to make employment decisions, Boards must ensure that Workforce Solutions Office staff is aware that the tests and test administration procedures are subject to the Uniform Guidelines on Employee Selection Procedures. Employment decisions include, but are not limited to the following:

- Selecting a candidate for training
- Selecting a candidate for transfer
- Hiring

- Referring a candidate to a suitable employer
- Licensing and verification

Test Validation

Boards must do the following:

- Ensure that purchased tests have been developed in accordance with the validation requirements set forth in the Uniform Guidelines on Employee Selection Procedures
- Review the manufacturer's most current validation study
- Include language in purchasing contracts requiring the manufacturer to provide copies of current validation studies to the Board upon request and at a negotiated minimal cost
- Provide copies of the current validation studies to interested parties upon request

Test Administration

Boards must ensure that, prior to administering tests to job seekers, Workforce Solutions Office staff does the following:

- Follows appropriate manufacturer guidance to understand the tests and learn how to use the corresponding materials (such as software and scoring guidelines)
- Coordinates with the employer to properly document the skill sets required to perform the responsibilities specified in the job description
- Ensures that skills tests will be administered only to applicants for jobs requiring the use of the corresponding skills on the job, as set out in the job description
- Consults with the employer to set appropriate and reasonable benchmarks to determine which job seekers are referred, consistent with normal expectations of acceptable proficiency in the workforce
- Provides a suitable testing environment

Records Retention

Boards must ensure that all test materials—paper and electronic—completed by job seekers in connection with employment decisions are retained for at least one year from the date of administration of the test.

Boards must maintain and have available for inspection any records disclosing the impact of selection procedures on employment opportunities. Records must show the identifiable race, sex and ethnic group of any job seeker to whom a test has been administered.

Boards must adopt safeguards to ensure that records are used only for intended purposes and are not used improperly.

Boards must ensure that Workforce Solutions Office staff maintains confidentiality of all records relating to the selection and referral of job seekers to employment opportunities.

C-606: On-site Staffing

Boards may outreach and assist local employers by sending Workforce Solutions Office staff to the jobsite to do the following:

- Recruit
- Screen
- Administer specialized testing (as discussed in [C-605: Specialized Testing](#))
- Schedule interviews

C-700: PROVISION OF INFORMATION ON EMPLOYMENT-RELATED ISSUES

C-701: Provision of Information

Boards must ensure that Workforce Solutions Office staff assists employers with employment-related issues by providing information and services available through the Texas workforce system, including the following:

- Labor market information (LMI)
- Wage range surveys
- Available talent pool
- Recruitment services
- Training resources
- Employment rules and regulations
- Equal employment opportunity (EEO) regulations
- Unemployment compensation tax and labor law information
- Resources for unemployment compensation claims appeals

C-702: Definition of Labor Market Information

Boards must be aware that LMI, defined as an employer service, is “providing substantive and customized information to a specific employer regarding occupational staffing or hiring patterns, working conditions, salary, local employment history and trends, available job seeker pool, etc., in response to the employer’s specific needs or requests.”

Boards must be aware that LMI does not include the following:

- Mass mailings or newsletters containing information about the job market in the employer’s workforce area
- Calling an employer to follow up on a referral list (to see who was hired)
- Attending job fairs and talking to all the participating employers
- Providing the employer with their TWC tax account number or FEIN (if unknown or not available)
- Discussing WorkInTexas.com (including introduction to LMI pages)
- Providing advice regarding wages based on previous job orders
- Discussing Workforce Solutions Office programs and services
- Providing general information regarding the labor market as described above

C-703: Providing the Labor Market Information Service to Employers

When providing the service to an employer, Boards must ensure that appropriate staff does the following:

- Determines the employer's specific needs
- Prepares a substantive and customized LMI report, based on the employer's specific needs, that contains the criteria specified in the definition of the LMI service
- Provides the customized report to the employer by the employer's preferred method

The following websites provide tools that may assist with creating customized LMI reports for employers:

- [Texas Labor Market Information](#)
- [WorkInTexas.com](#)
- Workforce Reports (not available to the public)
- [SitesOnTexas](#)

C-704: Documenting an LMI Service in WorkInTexas.com

Boards must ensure that appropriate staff records an LMI service in WorkInTexas.com only when the service provided meets the definition of LMI.

A complete list of [employer services](#) that are available in WorkInTexas.com can be found on the intranet (the intranet is not available to the public).

C-800: EMPLOYER TRAINING SERVICES

C-801: About Employer Training Services

Other services that benefit employers are supported by a variety of funding sources, many of which focus on training services for employers, such as the following:

- OJT training
- Customized training
- Skills Development Fund
- Self-Sufficiency Fund
- Work experience
- Internships

C-802: On-the-Job Training

Boards must be aware of the following:

Employers benefit from OJT by receiving a sliding scale reimbursement percentage (based on the size of the employer) of the job seeker's wages during the training period, while having the services of a full-time employee.

OJT provides unique opportunities for job seekers who already have some job-related skills, including the opportunity to "learn as they earn." By participating in training as an employee, the participant acquires new skills and knowledge and receives the same wages and benefits as current employees in the same or similar positions.

OJT focuses on the following:

- Jobs that use new technologies, production, or service procedures
- Upgrading to new jobs that require additional skills or workplace literacy
- Other appropriate purposes identified by the Board

Additionally, the following are true:

- The employer can be in the public, private nonprofit, or private sector.
- OJT provides knowledge or skills essential to the full and adequate performance of the job.
- The employer is reimbursed a portion of the individual's wage for the additional costs of providing the training and the increased supervision related to the training.

- OJT is limited in duration as determined by the Board, based on the occupation for which the participant is training, the participant's prior work experience, and the service strategy. OJT generally does not exceed six months.

For more information, see [WD Letter 06-14](#) and its five attachments, issued on August 21, 2014, and titled "On-the-Job Training."

C-803: Customized Training

Boards may offer customized training, which benefits an employer by tailoring training programs to the specific needs of the employer, especially by introducing new technologies or procedures. Current employees can participate in customized training to upgrade their skills and knowledge.

Customized training is:

- designed to meet the special requirements of an employer (or group of employers);
- conducted with a commitment by the employer to employ the individual on successful completion of the training; and
- structured such that the employer pays a significant portion of the cost of training.

C-804: Skills Development Fund

Boards must be aware of the following:

The [Skills Development Fund](#) (SDF) assists businesses and trade unions by financing the design and implementation of customized job training projects for new and existing employees in local businesses.

Businesses interested in participating in SDF grant projects must partner with one of the following eligible applicants:

- A public community college
- A public technical college
- The Texas Engineering Extension Service (TEEX)
- A Local Workforce Development Board
- A private, nonprofit, community-based organization (CBO) in partnership with one of the institutions listed above

Businesses and eligible applicants access these funds by submitting a project proposal. See [Skills Development Fund](#) for the submission form, program description, and links to the rules governing the program.

Trainee eligibility is open to current employees and new hires. There are no income or occupation eligibility requirements for trainees.

Interested parties may submit applications to TWC's Workforce Business Services Department. Assistance is available from Outreach & Project Development staff with the Office of Employer Initiatives.

For additional information, contact Workforce Business Services at (512) 463-8844 or skills@twc.state.tx.us, or refer to [TWC's Skills Development Fund rules at 40 Texas Administrative Code \(TAC\), Chapter 803](#).

C-805: Self-Sufficiency Fund

Boards must be aware of the following:

The [Self-Sufficiency Fund](#) (SSF) assists businesses and trade unions by financing the development and implementation of customized job training projects for new and current workers. SSF grants provide businesses with customized training solutions that support workforce hiring efforts and skills upgrading for current workers.

The purpose of SSF is to provide training for targeted employment opportunities, primarily for adult Temporary Assistance for Needy Families (TANF) customers, as well as those individuals at risk of becoming dependent on public assistance.

Businesses interested in participating in an SSF project must partner with one of the following eligible applicants:

- A public community college
- A public technical college
- A statewide extension service
- TEEX
- A private, nonprofit CBO

Businesses and eligible applicants access these funds by submitting a project proposal. See [Self-Sufficiency Fund for Employers](#) for the submission form, program description, and links to the rules governing the program.

Parties submitting proposals must involve the Board in the initial stages of project development through application submission and the implementation of projects approved for funding. All applicants must include a completed Local Workforce Development Board Review and Comment Form with the submission packet. Applications must be submitted to TWC's Workforce Business Services Department.

For additional information, contact Workforce Business Services at (512) 463-8844 or refer to TWC's Self-Sufficiency Fund rules at [40 TAC, Chapter 835](#).

C-806: Work Experience

Boards must be aware of the following.

Work experience is planned, structured learning that occurs in a workplace for a limited period of time. Work experience can be paid (in which case payment is made directly to the participant) or unpaid, and can be in one of the following sectors:

- Private, for-profit
- Nonprofit
- Public

Work experience benefits employers by providing:

- Job seeker screening
- Training assistance
- Qualified and productive workers with a strong career interest in the workplace

Work experience benefits participants by providing them with opportunities for career exploration and skills development.

Boards must ensure that work experience jobs are not entered into WorkInTexas.com.

C-900: RAPID RESPONSE

Boards must be aware of the following:

For employers facing major layoffs, rapid response is an on-site, early intervention program that provides transition and reemployment services to affected workers. The goal of rapid response services is to help affected workers transition to new employment as quickly as possible and preferably before they become eligible to receive unemployment benefits.

Rapid response is administered at the state level but operated at the Board level. Each Board has a Rapid Response Coordinator who can provide more information about rapid response services.

Boards must make rapid response services available to employers when one or more of the following circumstances occur:

- Announcement or notification of a permanent closure of a facility, store, enterprise, or plant, regardless the number of workers affected
- Announcement or notification of a mass layoff affecting 50 or more workers, or when a company files a Worker Adjustment and Retraining Notification (WARN), regardless of the number of workers affected by the announced layoff
- A mass job dislocation resulting from a natural or other disaster event, as defined by state or local emergency management policies
- The filing of a Trade Adjustment Assistance (TAA) petition, in accordance with §221(a)(2)(A) of the Trade Act

In the event that a layoff involves fewer than 50 employees, Boards may offer rapid response services at their discretion.

Required rapid response services for workers include, but are not limited to, the following:

- Job search assistance
- Labor market information
- Group stress management seminars
- Group financial management seminars
- Information and support for filing an unemployment claim for benefits
- Information about the TAA program; when appropriate
- Group orientation to Workforce Solutions Office services
- Seminars on change management

If the number of affected workers is small, employers can direct workers to a Workforce Solutions Office where they may receive rapid response services instead of providing services on-site.

C-1000: FOREIGN LABOR CERTIFICATION

C-1001: About Foreign Labor Certification

Boards must be aware of the following.

DOL's Foreign Labor Certification nonimmigrant visa program permits employers to hire foreign workers to perform temporary labor or services. Prior to filing a petition for the workers with the US Department of Homeland Security's US Citizenship and Immigration Services (USCIS), employers must file an application with DOL certifying the following:

- There are not sufficient workers who are able, willing, qualified, and available at the time and place where the foreign worker is to perform the work.
- Employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed US workers.

TWC's Foreign Labor Certification (FLC) Unit is responsible for assisting employers that have job opportunities in Texas to file their temporary applications for labor certification. This involves coordinating recruitment efforts and assisting DOL in the gathering of information needed, which forms the basis for the DOL Certifying Officer's determination to grant or deny labor certifications.

The certification process and recruitment efforts start with job orders in WorkInTexas.com and fall into one of the following two categories:

- H-2A jobs, targeting foreign temporary or seasonal agricultural workers
- H-2B jobs, targeting foreign temporary nonagricultural workers

The FLC Unit processes the following:

- H-2A agricultural and H-2B nonagricultural job orders
- Prevailing wage and prevailing practice surveys

To contact the FLC Unit, call (512) 475-2571 or email foreignlabor@twc.state.tx.us.

Boards may make arrangements with employers that include Workforce Solutions Office staff verifying the employment eligibility of job seekers.

Boards must ensure that Workforce Solutions Office staff does not alter or update any job order details on orders with an FLC status.

C-1002: H-2A Job Orders

Boards must be aware that as of March 15, 2010, Workforce Solutions Office staff was no longer required to verify the employment eligibility of job seekers referred to H-2A job orders.

Boards must ensure the following:

- No referrals are made for H-2A job orders unless the order has been accepted by TWC's FLC Unit for WorkInTexas.com.
- Workforce Solutions Office staff conducts an employer name search in WorkInTexas.com to determine if the employer's National Electronic Job Registry (Job Registry) order has been accepted for recruitment in Texas by the FLC Unit.

If the Job Registry order has been accepted by the FLC Unit and entered into WorkInTexas.com, Boards must ensure that Workforce Solutions Office staff does the following:

- Verifies that the job seeker is qualified and interested in traveling to the job opportunity
- Verifies that the Workforce Solutions Office is in receipt of the hard copy of the clearance order ([Form ETA-790](#) and a copy of the employer's attachment of assurances)
- Requests a hard copy of the clearance order from the FLC Unit—if it has not been received
- Explains in detail—and in a language readily understood by the job seeker—the terms and conditions of employment
- Follows all contact instructions issued by the FLC Unit and listed in the WorkInTexas.com order
- Provides to each job seeker a copy of [TWC Form E-50 \(Job Seeker Agricultural Checklist\)](#) and [Form E-83 \(Protection for Farmworkers\)](#) for review, both available on the intranet (the intranet is not available to the public)
- Ensures that the job seeker signs and dates the completed forms upon acceptance of the terms and conditions
- Calls the contact person on the clearance order/WorkInTexas.com order—with the job seeker present—to coordinate and arrange the interview process
- Enters the following information—after the job seeker is referred—into WorkInTexas.com Job Order Case Notes:
 - Date the E-50 and E-83 forms were given to job seeker
 - Date the E-50 form was completed

If the H-2A job order is not in WorkInTexas.com and the employer's job order has not been cleared by the FLC Unit, Boards must ensure that Workforce Solutions Office staff does the following:

- Notifies the FLC Unit at (512) 475-2571 or foreignlabor@twc.state.tx.us of a job seeker's interest in referral to the employer, if the job order can be accepted for recruitment
- Refers the job seeker to other temporary or permanent agricultural job orders in WorkInTexas.com

Boards must ensure that Form E-83 is provided to all job seekers who are farmworkers whether or not the WorkInTexas.com job order to which the job seeker is referred is an H-2A job order.

Boards must ensure that Workforce Solutions Office staff maintains all forms for the appropriate retention period (current year plus three).

C-1003: H-2B Job Orders

Identification of H-2B Job Orders in WorkInTexas.com

Boards must ensure that Workforce Solutions Office staff can identify H-2B job orders. In WorkInTexas.com, these job orders are indicated by the following:

- The FLC Job Type is H-2B
- An FLC Case No., if the order was entered by FLC staff
- A statement in the Job Description indicating that the employment is temporary, including the start and end dates

Verification of Employment Eligibility

Boards must be aware that effective April 29, 2015, DOL issued new H-2B regulations that rescinded the I-9 verification of employment eligibility requirement from staff referrals for the H-2B program.

C-1004: Prevailing Wage Surveys

The FLC Unit will conduct prevailing wage surveys only for the H-2A process.

Additional FLC information is available at the following:

- [TWC's Foreign Labor Certification](#) web page
- [DOL's Labor Certification](#) web page
- The [US Citizenship and Immigration Services](#) website
- 20 CFR Part 655, Subparts A, B, and H, and Part 656

C-1100: AGRICULTURAL SERVICES

Boards must be aware of the following.

TWC's Agricultural Services Unit offers employers job-ready job seekers and provides industry training for employers and potential employees to do the following:

- Provide a safer agricultural workplace through promoting safety compliance
- Promote awareness of growing agricultural job opportunities by increasing job placement in the agriculture industry
- Define agricultural occupations and their economic contributions to the state
- Seek new opportunities to serve the agricultural employment sector
- Coordinate recruitment with Workforce Solutions Office staff for out-of-state job orders through the Agricultural Recruitment System (the clearance system)

For additional information, contact TWC's Agricultural Services Unit at foreignlabor@twc.state.tx.us.

C-1200: WORK OPPORTUNITY TAX CREDIT

The Work Opportunity Tax Credit (WOTC) is a federal income tax benefit administered by DOL for employers that hire individuals from specified target populations.

WOTC's intent is to reduce the federal tax liability of employers that hire employees from the following target groups:

- Disabled veteransUnemployed Veterans
- Veterans with a service-connected disability
- Veterans receiving Supplemental Nutrition Assistance Program (SNAP) benefits
- Long-term family assistance recipients
- Temporary Assistance for Needy Families (TANF) recipients
- Offenders
- Vocational rehabilitation referrals
- SNAP recipients
- Supplemental Security Income (SSI) recipients
- Long-term unemployment recipients

Boards must ensure appropriate staff is aware that in order for an employer to qualify for WOTC tax credits for a new employee, it must do the following:

- Complete the following:
 - [IRS Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit](#) (must be completed on/before the employee's start date)
 - [ETA Form 9061, Individual Characteristics Form](#) (If the new hire has been given the [ETA Form 9062, Conditional Certification](#), it may be used in lieu of the ETA Form 9061.)
- Submit the completed forms within 28 days to the TWC WOTC Unit.

Employers may mail, fax, or email forms to:

Texas Workforce Commission

WOTC Unit

101 E. 15th Street, Room 202T

Austin, Texas 78778-0001

Fax: (512) 463-8819

wotc@twc.state.tx.us

When a job seeker's eligibility for WOTC can be verified prior to the hire date, WOTC certification is issued on a conditional basis. Conditional certifications are hiring tools that job

seekers in WOTC target groups present to prospective employers to alert the employers that there is a high probability they will be certified for WOTC if the job seeker is hired.

Conditional certifications benefit both employers and job seekers by offering employers a valuable tax credit and improving job seekers' chances of obtaining employment.

Boards must ensure that appropriate staff issues Work Opportunity Tax Credit (WOTC) conditional certifications only for individuals from the following target groups, and for which documentation can be provided prior to the hire date:

- Unemployed veterans;
- Offenders
- Vocational rehabilitation referrals.

Boards must ensure that appropriate staff verifies an individual's conditional certification eligibility as follows:

- Disabled veterans must provide the following:
 - A US Department of Veterans Affairs (VA) rating letter verifying the job seeker's disabled veteran service-connected disability status
 - Form DD-214 (Certificate of Release or Discharge from Active Duty), which verifies active military service
- Unemployed veterans must provide the following:
 - Form DD-214
 - Unemployment documents that verify the receipt of unemployment benefits for four weeks. To verify receipt of unemployment benefits, use the Unemployment Benefits System. An electronic or paper copy must be retained.
- Offenders must provide appropriate court documents.
- Vocational rehabilitation referrals must provide an Individualized Plan of Employment (IEP).

Boards must ensure that appropriate staff assists the job seeker by preparing ETA Form 9062, Conditional Certification Work Opportunity Tax Credit, which can be completed electronically using TWC's WOTC [ES77 database](#).

Within three to five business days after the submission of a conditional certification, the ES77 database automatically mails the following items to the job seeker:

- Cover letter
- [Form 9062](#)
- [Blank IRS Form 8850](#)

Boards must ensure that appropriate staff does the following:

- Informs job seekers that ETA Form 9062 and IRS Form 8850 will be delivered to the job seeker by mail

- Advises job seekers to inform prospective employers that the official WOTC certification will be issued subsequently, if the job seeker maintains the eligibility requirements as determined by the WOTC Unit

Boards must be aware that the WOTC Unit will issue the official WOTC certification once the following have occurred:

- The job seeker is hired
- The employer has timely filed the IRS Form 8850 application
- WOTC staff has verified the job seeker's eligibility by reviewing the ES77 database

Boards must ensure that questions regarding the certification process for the remaining WOTC target groups are directed to the WOTC Unit at 1-800-695-6879:

- TANF recipients
- Veterans receiving SNAP benefits
- SNAP recipients
- SSI recipients
- Long-term family assistance recipients

Boards must ensure that, when eligible job seekers receive WOTC conditional certifications, appropriate staff enters the *WOTC Eligibility* job seeker service into WorkInTexas.com.

Boards must ensure that cooperative agreements with service providers address the provision of WOTC services, including eligibility determinations.

Boards must ensure that appropriate staff receives training prior to providing WOTC conditional certifications to eligible job seekers. For training or assistance, contact the WOTC Unit at 1-800-695-6879.

Boards must retain electronic or paper copies of all conditional certifications and supporting documentation for four years.

[WOTC forms](#)

Part D – Services to Job Seekers

D-100: JOB SEEKER SERVICES

D-101: About Job Seeker Services

Local Workforce Development Boards (Boards) must be aware of the following.

The Wagner-Peyser Act requires that Boards assist job seekers in:

- Finding employment
- Meeting the work test requirements of the state unemployment compensation system

The Workforce Solutions Office is often an unemployment claimant's first resource when seeking employment because the claimant may be required to have an active WorkInTexas.com job seeker account to receive unemployment benefits. Wagner-Peyser Employment Service (ES) is one of the most important services available to help all job seekers, including unemployment claimants, achieve their employment goals.

Boards must be aware that, at a minimum, all Workforce Solutions Offices provide the following basic ES services:

- Registration with WorkInTexas.com
- Referrals to job orders
- Labor market information
- Knowledge, skills and abilities evaluation and assessment
- Services through community-based organizations (CBOs) and faith-based organizations (FBOs)
- Referral to support services

D-102: WorkInTexas.com Registration

Boards must be aware of the following.

ES customers are job seekers who usually are registered with WorkInTexas.com. Job seekers who are not registered can self-register by completing the online application. Workforce Solutions Offices provide -public access computers for online registration.

WorkInTexas.com registration requires that job seekers provide four general types of information:

1. Identifying and contact information—including name, date of birth, gender, address, telephone number and email address
2. Eligibility information—collected to help determine eligibility for specialized services, such as the following:
 - Veterans’ services (voluntary disclosure of veteran status)
 - Unemployment benefit claimant services
 - Migrant and Seasonal Farmworker (MSFW) services
 - Workforce Innovation and Opportunity Act (WIOA) dislocated worker services
 - Trade Adjustment Act (TAA) services
3. Qualification information—including work experience, occupational skill sets, education, training and certifications
4. Job preference information—desired job location(s), pay, shift, duration, and workweek

Optional information that may be included in a WorkInTexas.com registration includes:

- Ethnicity
- SSN (if not filing for unemployment benefits)
- Disability

Boards must ensure that Workforce Solutions Office staff does not enter or alter—under any circumstances—a job seeker registration without first consulting the job seeker.

Information from registration may be used to do the following:

- Determine eligibility for specialty services
- Assess qualifications
- Determine skill sets

Boards must ensure that Workforce Solutions Office staff does not refer a job seeker to a specific job without the job seeker’s prior consent or knowledge.

D-103: Referral to a Job Order

Once a job seeker completes registration in WorkInTexas.com, the job matching and contact process begins. In accordance with US Department of Labor regulations and TWC rules and policies, Boards must ensure that Workforce Solutions Office staff selects and refers equally qualified job seekers to job orders in the following order:

1. Eligible veterans
2. Eligible foster youth
3. Noneligible individuals (everyone else)

Boards must be aware that a two-day veterans hold is automatically placed on all job orders in WorkInTexas.com to ensure that veteran job seekers are given first opportunity to match all jobs before the general public.

The Veterans Only status on a new job order can be set to one of the following:

- Yes, indicating that, for the life of the order or until the status is changed, only veterans will match or be referred
- No, indicating that after the automatic two-day hold, the order will be available to all job seekers regardless of veteran status

Boards must ensure that Workforce Solutions Office staff continues to refer veteran job seekers to job orders in accordance with federal and state requirements for priority of service.

In addition to giving priority to eligible veterans and foster youth, Boards must ensure that Workforce Solutions Office staff:

- Gives a referral only when the job seeker's work experience, skill sets, and education match the job order requirements
- Does not make a job order contact that results in a fee being charged to the job seeker
- Does not make a job order contact to fill a job where a labor dispute exists, such as a strike or lockout
- Does not make a job order contact to a position where the services to be performed or the terms or conditions of employment are contrary to federal or state law

D-104: Labor Market Information

Boards must ensure that Workforce Solutions Office staff provides information about occupational requirements and labor market trends to employers, job seekers, and students. Job seekers often request information about occupational requirements or vocational options. The Labor Market Services pages in WorkInTexas.com include information on geographic areas, industries, education, and specific occupations. Additionally, the following career counseling websites are valuable tools for employers, job seekers, and Workforce Solutions Office staff:

- [Texas Labor Analysis](#)—includes economic and labor market data [O*NET](#)—identifies skill sets needed and tasks performed in specific occupations
- [Texas Career Check](#)—provides information on demand occupations and on colleges and universities that provide training
- [Texas Reality Check](#)—relates desired lifestyle to occupations and career paths
- [mySkills myFuture](#)—aids previously employed job seekers in matching their occupational skills and experiences to the skills needed in other occupations
- [My Next Move](#)

D-105: Knowledge, Skills & Abilities Evaluation Assessment

If a job seeker is unsuccessful in locating a suitable job in WorkInTexas.com, Boards must ensure that Workforce Solutions Office staff does the following:

- Asks the job seeker about additional experience or training not shown on the job seeker's Individual Profile.
- Updates and continually assess the job seeker's work registration.

Additionally, Boards must ensure that Workforce Solutions Office staff informs job seekers of other services, such as the following:

- Job readiness classes (if available)
- Counseling
- Vocational guidance services
- Support services (for example, transportation, child care)
- Educational services
- Job service plan/assistance
- Job development
- Job training
- Training program information
- Postemployment services
- Work experience
- Internships
- Relocation assistance
- Tutorial services
- Labor market information (See also [D-104: Labor Market Information.](#))

D-106: Services through Community-Based Organizations, Faith-Based Organizations, Nonprofits, and Private Organizations

Federal and state law allow states to administer and provide workforce development and support services through contracts with CBOs, FBOs, nonprofits, and private organizations.

Boards must develop and implement strategies for involving CBOs, FBOs, nonprofits and private organizations in the delivery of services in their workforce areas, in accordance with federal and state laws. Boards must develop policies and procedures that foster cooperation, coordination and participation with these organizations in workforce development programs and services.

Boards' outreach, procurement and contracting efforts must include these organizations as potential providers of services to customers. Boards must become familiar with relevant federal and state provisions for contracting with CBOs, FBOs, nonprofits and private organizations.

Boards must share this information with staff; Workforce Solutions Offices; service providers; customers; and CBOs, FBOs, nonprofits and private organizations within the workforce area.

Boards must promote and encourage cooperation with these organizations through financial and nonfinancial agreements. Workforce services that may be contracted by Boards to CBOs, FBOs, nonprofits and private organizations include, but are not limited to, activities provided under the following:

- Child Care
- Choices
- Supplemental Nutrition Assistance Program Employment and Training
- Workforce Innovation and Opportunity Act

D-107: Referral to Support Services

Boards must ensure that each Workforce Solutions Office makes available to job seekers a complete and up-to-date list of support services provided by community and state agencies.

The list can be created and maintained by the Board, an independently published list provided to or purchased by the Board, or an enterprise-wide incorporation of the Texas Information and Referral Network (2-1-1 Texas).

2-1-1 Texas is a referral line answered by nationally certified specialists who have access to the most comprehensive database of CBOs, government agencies and nonprofit organizations in Texas that provide assistance with food, rent, utilities, child care and other benefits. Job seekers can dial 2-1-1 or visit the [2-1-1 Texas website](#).

D-200: MIGRANT AND SEASONAL FARMWORKERS

D-201: Equality of Service to Migrant and Seasonal Farmworkers

In accordance with WIOA regulations at 20 Code of Federal Regulation, Part 653, Migrant and Seasonal Farmworkers (MSFWs) must receive Wagner-Peyser employment services that are qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

Boards must be aware of the following:

Services to MSFWs are federally mandated to ensure that MSFWs are offered the full range of employment services, benefits, and protections, including the full range of counseling, testing, and job training referral services. This includes an internal monitoring system, outreach, complaint processing procedure, and performance measures and indicators of compliance for MSFWs. The purpose of the mandate is to enhance the MSFW population's employability and to provide needed services.

See the [Texas Workforce Migrant and Seasonal Farmworkers Self Study Guide](#) on the intranet (the intranet is not available to the public) for additional information and referral requirements.

D-202: Migrant & Seasonal Farmworkers Outreach Program

Boards must be aware of the following.

In addition to the required MSFW services previously mentioned, certain Workforce Solutions Offices—designated as MSFW-significant Workforce Solutions Offices—must conduct outreach to MSFWs. An MSFW-significant Workforce Solutions Office is a Workforce Solutions office in which MSFW job registrants comprise 10 percent or more of the total job seekers registered during the previous program year (July to June).

Boards must ensure that MSFW-significant Workforce Solutions Offices provide an outreach program to locate and contact MSFW program-eligible adults and youth who are not being reached by Workforce Solutions Offices' normal intake activities. The purpose of the outreach program is to:

- Enhance the employability of MSFWs
- Provide support services

The goals of the outreach program are the following:

- Provide basic services where MSFWs work, live, or gather for recreational purposes

- Inform MSFWs of the full array of services available at the Workforce Solutions Office
- Provide needed support services and referrals to other service providers

Boards must ensure that Workforce Solutions Office staff documents all outreach activities as follows:

- Completes and maintains Form MSFW-002 (Migrant and Seasonal Farmworker Daily Log of Outreach Activities) in accordance with guidelines at [20 CFR §653.107](#), documenting all outreach activities.
- Ensures that the total number of MSFW contacts and other required items documented on [Form MSFW-002](#) are equivalent to the totals reported on [Form MSFW-001](#) (Migrant and Seasonal Farmworker Monthly Outreach Summary Contact Report).

[Forms MSFW-001 and MSFW-002](#) are available on the intranet (the intranet is not available to the public).

Boards also must ensure the following:

- Full-time Workforce Solutions Office staff members outreaching MSFW customers meet a standard of five contacts per day per employee, or 109 MSFW contacts per month
- Less than full-time Workforce Solutions Office staff members outreaching MSFW customers meet a standard of contacts per day per employee based on the proportion of a full-time schedule (for example, a half-time staff member must make 55 MSFW contacts per month)

Boards must ensure that Form MSFW-002 is available for review upon request.

Boards receiving supplemental ES funding for MSFW outreach must do the following:

- Develop an annual outreach activity plan detailing the use of the supplemental funds
- Make the plan available for review upon request

Additionally, if a Board's outreach activity plan includes using supplemental ES funds to hire full-time or part-time staff to conduct outreach activities, the Board must ensure that these staff members meet all of the requirements set out for Boards with MSFW-significant Workforce Solutions Offices.

Boards with MSFW-significant Workforce Solutions Offices and Boards receiving supplemental ES funding for MSFW outreach activities must submit Form MSFW-001, by the 10th business day after the close of the month, to TWC's Monitor Advocate at msfw.monitoradvocate@twc.state.tx.us.

Boards also must ensure that Workforce Solutions Offices retain Form MSFW-001 and Form MSFW-002 for the current year plus two years.

D-202.a: MSFW Outreach Worker Roles & Responsibilities

In most MSFW-significant Workforce Solutions Offices, the MSFW outreach worker may be a full-time position. The MSFW outreach worker is responsible for the following:

- Contacting and locating MSFWs where they work and live
- Observing the work and living conditions of MSFWs
- Explaining the services available
- Providing information about the job service complaint system
- Explaining basic farmworker rights with respect to the terms and conditions of employment
- Assisting in the preparation of a WorkInTexas.com job seeker account
- Referring MSFWs to a job currently available
- Assisting in making appointments with other Workforce Solutions Offices or other appropriate agencies
- Referring MSFWs to support services, if needed
- Assisting in the preparation of a worker complaint (See [A-100: Complaint Procedures.](#))

For additional information on the MSFW outreach program and outreach worker roles and responsibilities, refer to [20 CFR, Chapter V, Parts 653](#) and [658](#).

D-300: PRIORITY OF SERVICE

D-301: About Priority of Service

By law, Boards must ensure that eligible veterans and eligible foster youth receive priority over all other equally qualified individuals in the receipt of workforce services.

D-302: Eligible Veterans

Applicability of Priority of Service for Veterans

Boards must be aware that requirements for priority of service for veterans apply to all workforce service programs funded in whole or in part by the DOL's Employment and Training Administration or state funds.

Definitions

Boards must ensure that the following definitions are used when implementing priority of service for eligible veterans.

Eligible Veteran—any one of the following:

- Federal/state qualified veteran—a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable as specified at [38 USC 101\(2\)](#). Active services include full-time duty in the National Guard or a Reserve component, other than full-time for training purposes. [Note: This definition does not apply to eligibility for services provided by Disabled Veterans' Outreach Program/Local Veterans' Employment Representatives staff.]
- Federal qualified spouse—the spouse of:
 1. Any veteran who died of a service-connected disability
 2. Any member of the Armed Forces serving on active duty who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
 - i. Missing in action
 - ii. Captured in line of duty by a hostile force
 - iii. Forcibly detained or interned in line of duty by a foreign government or power
 3. Any veteran who has a total disability resulting from a service-connected disability, as evaluated by the Department of Veterans Affairs

4. Any veteran who died while a disability, as indicated in paragraph (3) of this section, was in existence

Boards must be aware that the spouse of a living veteran or service member (definitions 2 and 3 above) will lose his or her eligibility if the veteran or service member loses the status that is the basis for eligibility. For example, the spouse of a veteran with a total service-connected disability will not be eligible if the veteran's disability is revised to a lower level. Similarly, a spouse whose eligibility is derived from a living veteran or service member will lose his or her eligibility upon divorce from the veteran or service member.

- State qualified spouse—a spouse:
 1. Who meets the definition of federal qualified spouse
 2. Of any member of the armed forces who died while serving on active military, naval, or air service

Noneligible person—an individual who does not meet the definition of eligible veteran or the definition of eligible foster youth.

Point of entry—may include reception through a Workforce Solutions Office, as part of an application process for a specific program, or through any other method by which eligible veterans express an interest in receiving services, either in-person or online.

Identifying and Informing Eligible Veterans of Priority of Services

Boards must ensure that eligible veterans are:

- identified at the point of entry;
- screened in order to determine evidence of any significant barrier to employment (SBE), as defined in [WD Letter 08-15 Change 2](#), issued April 1, 2019, and titled “Jobs for Veterans State Grants Program: Reforms and Responsibilities of Workforce Solutions Office Staff Serving Veterans—*Update*” and WD Letter 25-15, issued October 26, 2015, and titled “Applying Priority of Service and Identifying and Documenting Eligible Veterans and Transitioning Service Members;” and
- Informed of their entitlement to:
 - Priority of service
 - The full array of employment, training, and placement services
 - Information on any applicable eligibility requirements for those programs and services.

Boards must ensure that Workforce Solutions Office staff screens individuals seeking services to determine if they are eligible veterans identified as having an SBE or eligible spouses.

Boards may use the [Significant Barriers to Employment Triage Tool](#) (WD Letter 08-15, Change 2, Attachment 1) or create a locally developed triage tool. Documentation of responses to the triage tool is not required.

Boards must ensure that when screening individuals to determine their status, Workforce Solutions Office staff does the following:

- Determines the purpose of the visit
- Explains that the purpose of the triage tool is to determine which Workforce Solutions Office staff is best suited to assist them
- Ensures that customers identify whether or not they are eligible veterans or eligible spouses
- Ensures that eligible veterans and eligible spouses confirm whether any of the SBE criteria or the Secretary's priority categories apply

Boards must ensure that an eligible veteran or eligible spouse identified as having an SBE is immediately referred to Disabled Veterans Outreach Program (DVOP) staff.

Boards must ensure that ES staff, WIOA staff, or other Workforce Solutions Office staff is available to provide services to eligible veterans and eligible spouses who have been determined either:

- To have an SBE, but for whom no DVOP staff is available to provide services
- Not to have an SBE

Boards must be aware that Senate Bill 431 amends the Texas Penal Code by adding §32.54, which makes it a Class C misdemeanor to falsely use or claim to hold a military record for the purpose of receiving priority of service.

Boards must ensure that eligible veterans are informed of the penalties associated with proclaiming eligible-veteran status that is fraudulent, fictitious or has been revoked.

Implementing Priority of Service

Boards must be aware of the following:

- Priority of service means the right of eligible veterans to take precedence over noneligible persons in obtaining workforce services.
- Taking precedence can mean either of the following:
 - Eligible veterans receive access to workforce services before noneligible persons.
 - If workforce services are limited, eligible veterans receive access to workforce services instead of or before noneligible persons.

Boards also must ensure that noneligible persons who are currently receiving workforce services are not displaced in order to provide priority of service to eligible veterans. Boards must ensure that the next available workforce services are provided to eligible veterans.

Example 1: An eligible veteran enters a Workforce Solutions Office to use a resource room computer for job search. However, all computers are being used by noneligible persons and there are several noneligible persons in line. In this case, the eligible veteran would receive priority by being moved to the front of the line but does not displace one of the noneligible persons already using a computer.

Example 2: For a service such as classroom training, priority of service applies to the selection procedure, as follows:

- First, if there is a waiting list for the formation of a training class, the eligible veteran will receive priority by being moved to the top of that list.
- Second, priority of service applies when an individual is both:
 - Approved for funding
 - Accepted or enrolled in a training class

Therefore, once a noneligible person has been both approved for funding and accepted or enrolled in a training class, an eligible veteran who is identified subsequently will not take the place of the noneligible person from that training class.

For more information on priority order related to WIOA employment and training programs, please refer to the [WIOA Guidelines for Adults, Dislocated Workers, and Youth](#).

Local Policies and Procedures

Boards must ensure that local procedures are implemented:

- To identify eligible veterans at point of entry by allowing individuals to self-identify as eligible veterans (such as placing a sign-in sheet at the reception desk at Workforce Solutions Offices that prompts all customers to declare their eligible veteran status prior to receiving services)
- That do not require completion of a self-attestation form

Boards must ensure that written copies of local priority of service policies and procedures are maintained at all service delivery points and, to the extent practicable, posted in a way that makes it possible for the public to easily access them.

For information on available tools for improving the provision of services to veterans and veteran spouses, see [TA Bulletin 154](#), issued July 25, 2007, entitled Tools for Improving Services to Veterans, and subsequent updates.

D-303: Eligible Foster Youth

Definitions

Boards must ensure that the following definitions contained in [Chapter 801](#), TWC's Local Workforce Development Boards rules, are used when implementing priority of service for eligible foster youth:

- Current foster youth—A youth, age 14 or older, who is receiving substitute care services under the managing conservatorship of the Texas Department of Family and Protective Services (DFPS), including youth residing in private foster homes, group homes, residential treatment centers, juvenile correctional institutions, and relative care
- Former foster youth—A youth up to 23 years of age, who formerly was under the managing conservatorship of DFPS, until:
 - a court transferred the conservatorship;
 - the youth was legally emancipated or the youth's minority status was removed by a court; or
 - the youth attained 18 years of age.

Boards must ensure that written copies of local priority of service policies are maintained at all service delivery points and, to the extent practicable, posted in a way that makes it possible for the public to easily access them.

Priority Order

Boards must ensure the following:

- Eligible foster youth receive priority over all other equally qualified individuals—except eligible veterans—in the receipt of federal- and state-funded services.
- Workforce services are prioritized and targeted for youth transitioning out of the foster care system and for former foster youth.

D-304: Priority of Service for Support Services

Boards must be aware of the following:

To ensure that eligible veterans and eligible foster youth receive priority over all other equally qualified individuals in the receipt of workforce services, they also must have access to needed support services (such as child care, transportation).

Implementing priority of service for the majority of support services is not difficult; however, because child care services are unique, the following additional guidance is provided.

Child Care

Boards must be aware that the priority for child care services for eligible veterans and eligible foster youth is contingent on the availability of TWC child care funds. Boards with a waiting list for TWC-funded child care services must not discontinue care for a child currently enrolled in child care services in order to serve a child of an eligible veteran or a child of a foster youth.

For more information on priority for child care support services, please see Section B-400 of the [Child Care Services Guide](#).

D-400: BENEFITS COORDINATION

D-401: About Employment Service/Unemployment Benefits Coordination

Claimants are a priority population for the receipt of reemployment services and assistance. TWC has expressed its interest in ensuring that Boards are treating claimants as a priority population and are providing a full range of basic career services and labor exchange services, including career services as specified in WIOA.

Boards must be aware of the following:

- Each Board must designate a local Workforce/Unemployment Insurance (WF/UI) coordinator to communicate with the state WF/UI coordinator on issues related to claimants.
- TWC strongly encourages Boards to design services that provide early intervention with claimants.
- Providing continued comprehensive services for claimants throughout the life of their unemployment claim leads to reemployment.
- Boards should establish claimant protocols that include continued one-on-one reemployment services.

The longer individuals receive unemployment benefits, the more likely they are to exhaust their benefit amount. Thus, it is important that staff is aware of the key points within the life of the claim are reflected in Boards' service delivery strategies.

For example:

- At the time of filing for benefits, a claimant must seek—and accept if offered—a suitable job that pays at least 90 percent of the claimant's previous wage. Following the eighth week of unemployment, claimants must consider jobs paying 75 percent of their previous wage.
- Claimants on the initial claims list who have not responded to a welcome letter by week three may be notified by letter or by messaging through their WorkInTexas.com account to attend available workforce orientations and/or receive all available services.
- At week five, three weeks before they must accept a job at 75 percent of their previous wage, it is important that services be increased accordingly.

Most claimants are required to do the following:

- Register for work in WorkInTexas.com within three business days from the date of submitting the initial claim for unemployment benefits
- Be able and available for full-time work
- Actively search for employment

Individuals who do not have to register in WorkInTexas.com or search for employment include those who are:

- employed by a company that is participating in an approved Shared Work Program, as described in [Texas Labor Code, Chapter 215](#);
- on temporary layoff with a definite return-to-work date;
- participating in training approved by TWC's three-member Commission; and
- members in good standing of a nondiscriminatory union hiring hall.

These individuals are considered workforce attached and are not truly available to other employers.

If the claimant is required to register and seek work, the claimant's résumé must be in active status the entire time the claimant is receiving unemployment benefits or is appealing a determination from TWC not to pay benefits. Additionally, the claimant must do the following:

- Make an active search for employment if required to do so, and document those efforts, in the event that TWC requests evidence of acceptable work search
- Be physically able to work
- Be available for full-time employment
- Apply for and accept suitable employment
- Call or report to a Workforce Solutions Office, when instructed
- Participate in required reemployment activities if determined likely to exhaust benefits
- Request payment for weeks of unemployment

If the claimant does not register for WorkInTexas.com within the prescribed time, a WorkInTexas.com registration for the claimant is automatically created using basic information from the individual's claim. These automatically created registrations are sufficient for job matching but are of lower quality than ones completed by the claimant.

As a best practice, it is recommended that Boards outreach all claimants listed in the report. One reason for not self-registering is poor or limited computer skills. The report provides a list of claimants who can potentially benefit from and appreciate direct staff-assistance.

Boards must ensure that Workforce Solutions Office staff follows the requirements set forth in WD Letters, the ES Guide, Board-administered program contracts, and the TWC-Board Agreement when assisting claimants at Workforce Solutions Offices. These requirements include the following:

- Advising claimants of the requirement to register for work in WorkInTexas.com if they are required to do so.
- Entering timely and accurate data for claimants who lack access to WorkInTexas.com when claimants request staff assistance to register for work.

- Entering all services provided to claimants into WorkInTexas.com or TWIST in a timely manner.
- Advising claimants of all methods for applying for unemployment benefits or requesting payment of unemployment benefits, emphasizing application and payment request options available via the internet. Regardless of the method, claimants must key or call in their own information.
- Directing claimants and employers to refer questions and problems to a Tele-Center.
- Providing claimants and employers with Tele-Center phone numbers. See [Unemployment Benefits Contact Information for Claimants](#) and [Unemployment Benefits Contact Information for Employers](#).
- Directing claimants to the [Unemployment Benefits Work Search Guidelines](#).

D-402: Texas Caller's Identity – Tele-Center procedures

If unsure of a Texas caller's identity, Tele-Center staff instructs the caller to go to a Workforce Solutions Office and present a Social Security number (SSN) card and a current Texas driver's license or other photo identification. Workforce Solutions Office staff then contacts TWC using the Help Line number assigned to the workforce area and notifies UI staff if the individual's identity can be verified by the documents provided. Identity can be confirmed only if a Tele-Center agent speaks directly with Workforce Solutions Office staff.

Boards must ensure that the help line numbers are not given to claimants; they are available to Workforce Solutions Office staff for use only when it is necessary to speak immediately with a Tele-Center agent about a pressing unemployment claim issue.

D-403: Work Search

Boards must set the required minimum number of weekly work search contacts for their workforce area, as set forth in TWC's Chapter 815 Unemployment Insurance rule [§815.28](#).

For additional information, see [WD Letter 01-12](#), issued January 12, 2012, entitled "Unemployment Insurance Weekly Work Search Contact Requirements," and subsequent updates.

Boards must ensure that Workforce Solutions Office staff assists unemployment claimants with their work search, including those activities set forth in the following:

- Section 815.28 (Work Search Requirements) of TWC's UI rules
- The [list of acceptable work search activities](#)

Assistance that can be provided to claimants includes the following:

- Making contact with claimants very early in the claim cycle; sustaining contact with the claimant throughout the claim cycle—**TWC strongly encourages Boards to dedicate necessary resources to provide sustained contact with claimants to assist them with their reemployment efforts**
- Reinforcing the requirement that claimants must actively seek work in order to continue receiving unemployment benefits
- Collaboratively reviewing and updating claimants' WorkInTexas.com registrations to ensure the best possible opportunity for matches to job orders
- Teaching claimants how to search WorkInTexas.com for job orders
- Encouraging claimants to register with and search for jobs using other job boards if they have limited matches in WorkInTexas.com
- Reviewing claimants' résumés and making suggestions on possible improvements; advising claimants of available workshops on résumé writing, interview preparation, and so forth
- periodically running job searches for claimants in WorkInTexas.com, and if appropriate matches are identified, contacting the claimants to offer them a job referral. (A search can be run whether or not the claimant is present, but the claimant must accept the job referral before a *Contact* is entered into WorkInTexas.com.)
- Determining if additional services, such as WIOA, are necessary to assist the claimant in returning to work
- Enrolling claimants in WIOA dislocated worker services when appropriate

Additionally, it is important to consider more highly targeted strategies for serving claimants, such as the following:

- Establishing job clubs for claimants scoring above the cutoff who have not secured employment within a specified amount of time (for example, four weeks). For example, have claimants attend a job club at the Workforce Solutions Office and assist them with improving their résumés and interview skills, searching for job opportunities, and scheduling job interviews
- Comparing the workforce area's claimant population to available job orders in the workforce area, particularly in WorkInTexas.com. In instances in which there are an inadequate number of job orders in a particular occupation for the number of claimants, it is important for TWC's Business Services Unit to make contact with employers and engage in job development.
- Using a job developer to assist in locating potential jobs for individual claimants for whom no current opening is listed in WorkInTexas.com
- Using WIOA dislocated worker funds, provide eligible claimants with access to career services, including training services when appropriate

Boards must ensure the following:

- Claimants receive the full range of labor exchange services available to facilitate their earliest return to work

- Claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure that they make a meaningful and realistic work search
- The local WF/UI coordinator notifies the state WF/UI coordinator if staff becomes aware that an unemployment claimant:
 - is not able to, or available for, work;
 - refused work or a staff-generated job referral; or
 - is not actively seeking work.
- The local WF/UI coordinator, when notifying the state WF/UI coordinator of a potential issue, does the following:
 - Provides a brief description of the potential issue
 - Does not investigate the issue
- Workforce Solutions Office staff does not manually open or close a claimant's Wagner-Peyser application in WorkInTexas.com and does not enter or alter—under any circumstances—a claimant's registration without first consulting with the claimant.

WorkInTexas.com automatically transmits certain outcome information, including job contact outcomes, to the Unemployment Benefits System to provide notification of a potential eligibility issue. When WorkInTexas.com transmits the following job contact outcomes, the Unemployment Benefits System flags the claimants so the information can be reviewed to determine if the claimants are eligible to continue receiving unemployment benefits:

- Did not report to work
- Did not accept job
- Did not report for interview
- Did not accept WorkInTexas.com Contact generated by staff (refused referral)

Boards must ensure that Workforce Solutions Office staff records the above job contact outcomes in WorkInTexas.com in order for WorkInTexas.com to automatically transmit the information to the Benefits System.

In addition to the outcomes previously listed, there are several other potential issues that require the local WF/UI coordinator to manually communicate with the state WF/UI coordinator, including the following:

- Transportation problems
- Child care problems
- Vacations or other events that require the claimant to be out of town
- Extended illness or injury
- Return to full-time work and continuing to file for unemployment benefits
- An undeliverable outreach letter returned by the US Post Office
- Any other issue that impedes a claimant's ability to obtain employment

Boards must ensure that the local WF/UI coordinator uses the [Potential Work Issue Reporting Template \(WF-42\)](#) to inform the state WF/UI coordinator of potential issues.

wfui.coordinator@twc.state.tx.us.

The WF-42 template is available on the intranet (the intranet is not available to the public).

D-404: Suitable Work

Boards must ensure that prior to entering a claimant into education or training; Workforce Solutions Office staff tests the labor market to determine if suitable work is available.

Boards must ensure that Workforce Solutions Office staff determines if a job is suitable based on the following:

- The job seeker's experience, qualifications and training
- Working conditions and pay for similar work in the local workforce development area
- Any risks to the job seeker's health, safety, or morals
- Distance to work from the job seeker's home with consideration of local commuting patterns

D-405: TWC-Approved Training for Claimants

Boards must be aware of the following.

Generally, claimants can participate in any type of training and remain eligible for benefits; however, only certain training is recognized as TWC-approved training. As stated in Federal Unemployment Tax Act section [3304](#), participation in TWC-approved training exempts claimants from their work search requirement and prevents denial of unemployment benefits based on:

- Availability for work
- Refusing an offer of suitable work

The following trainings are considered approved:

- Workforce Innovation and Opportunity Act (WIOA)–funded training
- Trade Adjustment Assistance (TAA)–funded training
- Any training funded by one of the following entities:
 - TWC Vocational Rehabilitation services (TWC-VR)
 - Federal or state veterans' agency (VA)
 - A program specifically designated by the Texas Workforce Commission (TWC)

TWC's Unemployment Insurance rule [§815.25](#) specifies that, if the funding source does not qualify the training for automatic approval, training may be approved if the claimant's current occupation is not a high-demand occupation and the training is for an occupation that is in demand.

Boards must ensure that assessments of TWC-approved training are made in the following situations:

- Tele-Center staff advises the claimant to contact a Workforce Solutions Office if questions arise regarding approval of training.
- While working with a claimant, Workforce Solutions Office staff becomes aware that a claimant is already enrolled in training or needs training.

Boards must ensure that when making assessments in these situations, Workforce Solutions Office staff does the following:

- Determine whether the training is funded by TWC Vocational Rehabilitation, TAA, or a federal or state VA. If so, it is considered TWC-approved training and must be entered into TWIST, within two business days, under the Optional Question tab, which is accessible from the Intake Common screen. Since this training is automatically approved, the remaining assessment questions in TWIST do not need to be completed.
- Complete the rest of the assessment questions in TWIST to determine whether the training can be approved, if the training is not automatically considered approved based on the funding source.
- Consider the following when completing the assessment:
 - Claimant's current skills and occupation to determine the likelihood of reemployment within a reasonable time
 - Quality of the claimant's WorkInTexas.com registration to ensure that it is sufficient to result in quality matches
 - Number and types of WorkInTexas.com matches the claimant is receiving—matching jobs must meet the minimum suitable work requirements in [Texas Unemployment Compensation Act §207.008](#) (If the claimant has no suitable job matches in WorkInTexas.com, it may be appropriate to consider determining eligibility for training.)
- Assist the claimant in determining the appropriate type of occupational training, if an assessment finds that a claimant is appropriate for participation in training. Training in occupations on the Statewide Target Occupations List or a Board's Target Occupations List meets the criteria for TWC-approved training.

Boards must ensure that training provided entirely through distance learning results in a nationally recognized degree or credential as set forth in [WD Letter 37-07, Change 1](#), issued

January 2, 2008, and titled “Workforce Investment Act: Application of Definitions of Credential, Degree/Diploma, and Certificate: Clarification,” and subsequent updates.

Boards also must be aware of the following:

- Boards are not required to fund all claimant requests for training.
- Assessments can be conducted by phone or in person.
- Assessment information must be entered into TWIST, within two business days, under the Optional Question tab, which is accessible from the Intake Common screen.
- Entry of assessment information must not preclude other routine data entry required to track services or training in TWIST.
- Tele-Center staff makes the final determination—based on the assessment provided by Workforce Solutions Office staff—on whether training is recognized as TWC approved.

D-406: Unemployment Benefits Appeals

Boards must be aware of the following circumstances that involve Board and Workforce Solutions Office staff in the [UI appeals process](#):

- An appealing party submits an appeal by US mail directly to a Board office or Workforce Solutions Office.
- A claimant or an employer submits an appeal in person at a Board office or Workforce Solutions Office.
- A claimant or an employer requests the use of Workforce Solutions Office resources to submit an appeal without staff assistance (self-service appeal).
- An appealing party requests use of Workforce Solutions Office resources to participate in a TWC hearing.

Staff Support for Claimants and Employers

Boards must ensure that Board staff and Workforce Solutions Office staff adheres to the following procedures:

1. When a Board office or a Workforce Solutions Office receives an appeal by mail, date stamp the appeal on the day received, attach the postmarked envelope in which it arrived and forward both by mail within one business day of receipt to:

Appeal Tribunal
Texas Workforce Commission
101 E. 15th Street, Room 410
Austin, Texas 78778-0001

2. When a claimant or an employer visits the Workforce Solutions Office in person and requests to submit an appeal, give the appealing party the option of submitting the appeal by one of the following submission methods:

By fax:

- Provide a [Texas Workforce Commission Notice of Appeal in English \(Form A-4\)](#) or [Spanish \(Form A-4s\)](#), both available on the intranet (the intranet is not available to the public).
- Upon completion and return, countersign and date the form and provide a copy to the appealing party.
- Ensure that both the appealing party and the staff member initials any corrections to the form.
- Fax the form and determination, if attached (a copy of the determination is not required with submission), to TWC Appeals at (512) 475-1135.
- Instruct the appealing party to keep the fax confirmation page.

Online:

- Guide the appealing party through the Notice of Unemployment Benefits Appeal online form.
- Instruct the appealing party to keep the confirmation number provided online at the end of the appeal submission process.

3. When an employer requests the status of an appeal, direct the employer to the [Unemployment Benefits Services Appeals Data System](#), under the Appeals Information and Resources menu:
 - The system allows employers to review current appeal activity and activity from the previous two years; it is available 24 hours a day, seven days a week. The employer appeal status pages are view-only and available only in English.
4. Employers and claimants must submit appeals online, in person at a Workforce Solutions Office or by mail or fax to the Appeals department at the address or fax number on the Determination Notice. Appeals cannot be submitted by email or over the telephone.
5. Workforce Solutions Office staff must advise employers or claimants who want to report errors on their appeal records to contact TWC's Unemployment Appeals department at appeals@twc.state.tx.us or the Appeals Status Line at (512) 463-2807.
6. When a claimant or employer requests to use resources to send information to TWC, provide the following:

- Access to a fax machine
- Assistance in operating the fax machine, if requested
- A fax confirmation sheet with transmittal date, time, and record of successful transmission

Access to Workforce Solutions Office Resources

Boards must be aware that claimants and employers can request to use a Workforce Solutions Office fax machine to address matters related to their claims, including appeals, without providing specific information on what they are faxing.

Boards must ensure that, upon request, Workforce Solutions Office staff provides claimants and employers access to the following:

- Telephone/speakerphone
- Fax machine
- Location in which to participate in an unemployment telephone first-level investigation or subsequent appeal hearing

Boards must ensure the following:

- Unemployment benefits transactions take priority over another fax usage
- Claimants and employers are provided any necessary assistance with equipment
- A notice in English and Spanish is posted by the fax machine informing claimants and employers that they can request a confirmation of the fax transmittal if one is not automatically provided
- Claimants and employers have access to resources and assistance at all times during a Workforce Solutions Office's regular business hours

It is recommended that Boards have Workforce Solutions Office staff posts a notice in English and Spanish on any public-accessible Workforce Solutions Office doors reminding claimants and employers that they can submit an appeal immediately by mail, fax, or the online appeal form.

D-407: Unemployment Benefit Payment Methods

TWC pays unemployment benefits by direct deposit or through a debit card. For more information on these benefit payment options, please see the following TWC website pages:

- [Receiving Benefit Payments by Direct Deposit](#)
- [Receiving Benefit Payments by Debit Card](#)

D-408: Prohibited Activities Boards must ensure that Workforce Solutions Office staff does not engage in the following activities:

- Answering questions or making predictions about unemployment benefits eligibility and receipt. Workforce Solutions Office staff must direct all persons with unemployment benefits questions and problems to an Unemployment Tele-Center (1-800-939-6631).
- Collecting weekly work search logs. The collection of claimant work search information (known as work search logs) is the sole responsibility of TWC's Unemployment Benefits Division staff.
- Accepting custody of debit cards voluntarily surrendered by claimants or others. Boards must ensure that Workforce Solutions Office staff:
 - Does not, for any reason, accept a returned debit card
 - Directs any individual who attempts to surrender a debit card to contact a Tele-Center to speak with a customer service representative
- Setting up a fictitious claim by calling a Tele-Center or via the online Apply for Benefits application as an example for a claimant or as a way to test that the system is accepting claims.
- Listening to or participating in claimant conversations. It is inappropriate for Workforce Solutions Office staff to monitor claimant conversations when a claimant is using a telephone at a Workforce Solutions Office to submit a claim, participate in an appeal hearing or provide information requested by a Tele-Center.

The following WD Letter and TA Bulletins, and subsequent updates, provide Unemployment-related technical assistance:

- [WD Letter 17-05](#), issued July 14, 2005, and titled "New Unemployment Insurance Minimum Pay Reduction Requirements in WorkInTexas.com"
- [TA Bulletin 291](#), issued October 16, 2019, and titled "Serving Unemployment Benefits Claimants"
- [TA Bulletin 240](#), issued July 13, 2011, and titled "Supporting Unemployment Insurance Appeals in Texas Workforce Solutions Offices"
- [TA Bulletin 146, Change 1](#), issued March 29, 2012, and titled "Online Payment Request System for Unemployment Insurance—Update"

D-500: REEMPLOYMENT SERVICES AND ELIGIBILITY ASSESSMENT (RESEA)

The goal of the Reemployment Services and Eligibility Assessment (RESEA) program is to provide claimants with a wide array of available resources that support reemployment as quickly as possible and to connect claimants to reemployment services, including coenrollment in Wagner-Peyser–funded employment services, the Workforce Innovation and Opportunity Act (WIOA) dislocated worker program, or other program services, as appropriate. Boards must be aware that RESEA participants who have been prioritized and referred to Boards are considered to have met the eligibility criteria for dislocated worker services under Category 1, as outlined in the [WIOA Eligibility Documentation Log](#).

For more information, see the [RESEA Program Guide](#).

D-600: TEXAS PAYDAY WAGE CLAIM PROCESS

TWC's Labor Law Section enforces the [Texas Payday Law](#) (Texas Labor Code, Chapter 61), which:

- protects employees who have not been paid earned wages; and
- provides employers and employees with a method for resolving wage disputes without the necessity of court action

Boards must ensure that Workforce Solutions Office staff assists individuals wishing to file a wage claim by adhering to the following procedure:

- See [How to Submit a Wage Claim Under Texas Payday Law](#) for more information and for the Texas Payday Law Wage online claim application and paper forms in English and Spanish.
- Individuals can file a wage claim by using TWC's online system, which is the quickest method for filing and ensures complete information is provided.
 - [Online Wage Claim in English](#)
 - [Online Wage Claim in Spanish](#)
- Wage claims can also be filed using Form LL-1. If the paper form is used, the entire wage claim form must be accurately and legibly completed.
 - [English Wage Claim LL-1 form in Word](#)
 - [English Wage Claim LL-1 form in PDF](#)
 - [Spanish Wage Claim LL-1 form in Word](#)
 - [Spanish Wage Claim LL-1 form in PDF](#)
- If using the current Form LL-1, the form must be signed by the wage claimant declaring that all information is true under penalty of perjury.
 - An older version of the LL-1 form must be signed by the wage claimant and sworn to before a TWC employee, a Board-appointed designee, or a notary public.
 - Staff should discontinue use of this version.
- See [TA Bulletin 288](#), issued January 22, 2018, and titled "Texas Payday Wage Claim Process—Update," and its attachment, [Texas Payday Wage Claim Process Desk Aid](#). Copies of any payroll checks or stubs, or any information to support the claim, must be submitted with the wage claim form.
- The completed wage claim form with attachments must be faxed to (512) 475-3025 or mailed to:

Texas Workforce Commission
Labor Law Section
101 E. 15th St., Rm. 124T
Austin, Texas 78778-0001

Boards must ensure that Workforce Solutions Office staff does not:

- pre-sign blank wage claims;
- print copies of the LL-1 on any kind of letterhead. (Labor Law cannot accept altered forms.);
- give advice to individuals about the Texas Payday Law; or
- accept, or swear to, copies of signed wage claims with non-original signatures.

Boards also must ensure that Workforce Solutions Office staff:

- distributes the most recent [payday wage claim form](#);
- is aware of current wage claim process procedures; and
- instructs individuals to direct any questions to TWC's Labor Law Section at 800-832-9243 or (512) 475-2670.

Part E – Oversight

E-100: PERFORMANCE MEASURES

E-101: About Performance Measures

Performance measures are indicators of progress in administering effective services to employers and job seekers. The Texas Workforce Commission (TWC) is responsible for developing the system of performance accountability for Local Workforce Development Boards (Boards).

The Wagner-Peyser Act requires delivery and oversight of the following five Employment Service (ES) activities:

- Assisting job seekers in finding employment
- Assisting employers in filling jobs
- Facilitating the match between job seekers and employers
- Participating in a system for clearing labor between the states
- Administering the work test requirements of the state unemployment compensation system

The US Department of Labor (DOL) measures each state's success in delivering employment services, based on the five activities listed above, by instituting performance measures relating to:

- ES
- Services to veterans
- Services to migrant and seasonal farmworkers (MSFWs)

TWC measures each Board's success in delivering services based on Reemployment and Employment Engagement Measures (REEMs) and integrated common measures that are included in the Board's contract with TWC.

Boards' ES performance is reported monthly through TWC's monthly performance report.

E-102: Services to Eligible Veterans

Federal law requires that Workforce Solutions Office staff provides the maximum level of services to veterans.

Veterans are included in the calculation of Boards' ES performance measures.

E-103: Migrant Indicators of Compliance

Boards and Workforce Solutions Offices determine if they are meeting federal standards for services to MSFWs. This is accomplished by tracking services provided to MSFWs compared to services provided to non-MSFWs, to ensure that MSFWs are receiving services that are qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

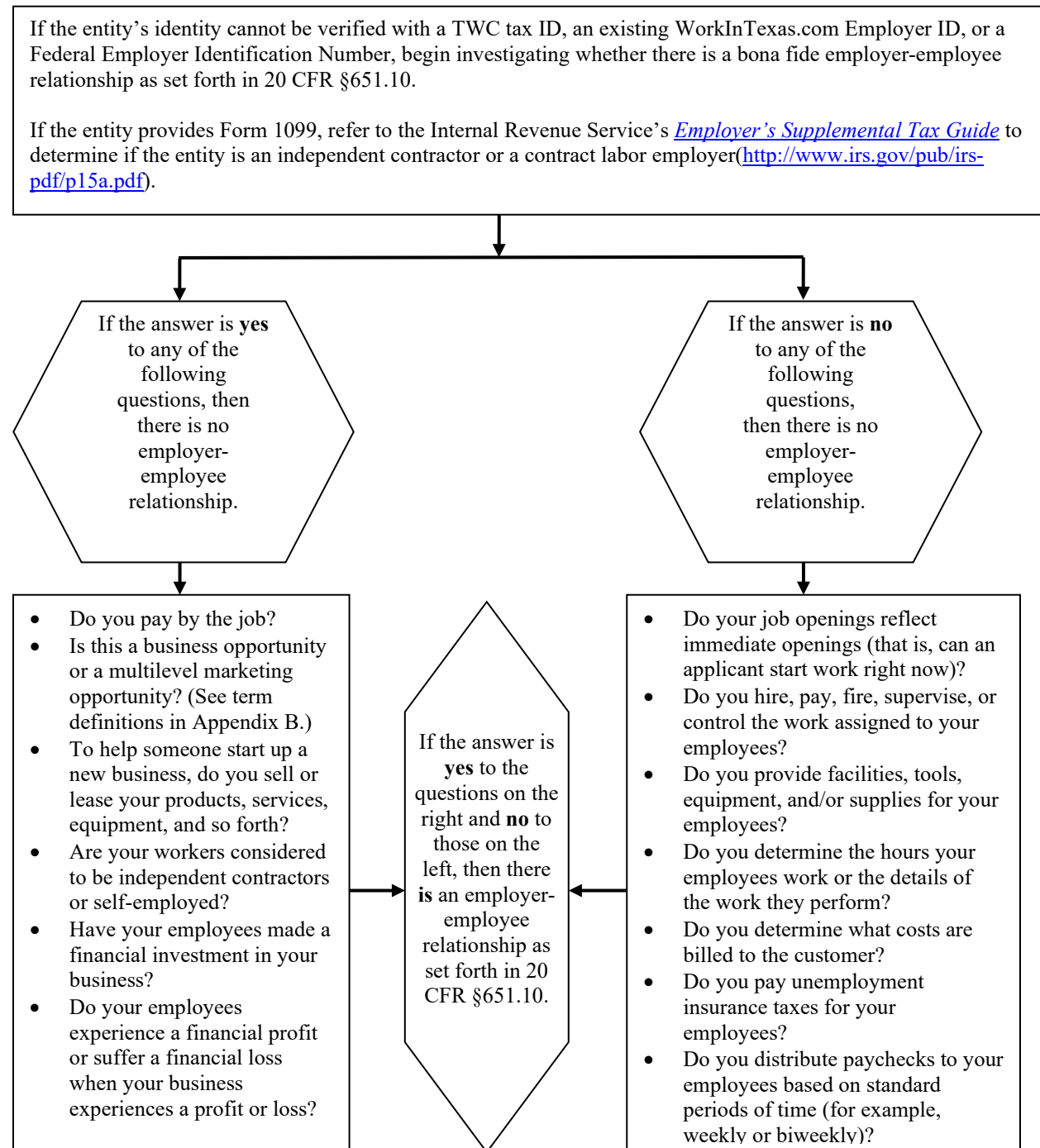
Boards must ensure that Workforce Solutions Office staff does the following:

- Identifies job seekers who are MSFWs
- Indicates in WorkInTexas.com that a job seeker is a MSFW
- Provides and records services to MSFWs

The statewide target consists of the total number of job seekers identified as MSFWs. The number varies from year to year.

APPENDIX A: EMPLOYER-EMPLOYEE RELATIONSHIP FLOWCHART

Staff may use the flowchart below to determine an entity's potential eligibility based on whether an employer-employee relationship exists.



APPENDIX B: EMPLOYER DEFINITIONS FOR USE WITH WORKINTEXAS.COM

Employer: The US Department of Labor’s Employment and Training Administration defines an employer as a person, firm, corporation, or other association or organization that:

- has an employer relationship with respect to employees, as indicated by the fact that it hires, pays, fires, supervises, and otherwise controls the work of such employees; and
- currently has a location within the United States to which US workers may be referred for employment and proposes to employ a worker at a place within the United States.

Note: Federal contractors associated with the military are considered employers, even if the jobs are located outside the United States.

An association of employers is considered an employer if it has all the attributes of an employer set forth in this definition. However, such an association is considered a joint employer with the employer member if either shares in exercising one or more of the definitional attributes of “employer.”

Professional Employer Organization: Under Chapter 91 of the Texas Labor Code, Professional Employer Organizations (PEOs) provide services through co-employment relationships in which all or a majority of the employees providing services to a client, a division, or a client’s work unit are covered employees. The term does not include:

- temporary workers;
- independent contractors;
- the provision of services that otherwise meet the definition of a PEO by one individual solely to other individuals who are related to the service provider by common ownership; or
- a temporary common worker employer as defined in [§92.002\(7\) of the Texas Labor Code](#), Chapter 92 (<http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.92.htm#92.002>).

PEOs:

- lease covered employees on a long-term or continuing basis to a client;
- assign covered employees for a long duration;
- do not necessarily maintain their own pool of labor (PEOs approach an existing company and offer to take over the company’s employment responsibilities, and the client pays the PEO a fee to lease the covered employees); and
- must register with TDLR.

Multilevel Marketing: Independent, unsalaried salespeople of multilevel marketing (MLM) plans are often referred to as distributors, associates, independent business owners, dealers, franchise owners, sales consultants, consultants, and independent agents. They represent a parent company and receive a commission based on the volume of product sold through each of their independent businesses or organizations.

MLM distributors grow their organizations by building an active customer base that buys directly from the parent company or by recruiting a “downline” of other distributors that build their own customer bases. Additionally, independent distributors can earn a profit by retailing products they purchased from the parent company at a wholesale price. For MLM plans to be considered legal, distributors must earn more from product sales than from the recruitment of downline independent distributors. Distributors must also be able to get a refund of not less than 90 percent of upfront payments for unused, resalable products.

Note: The Federal Trade Commission warns that the practice of earning commissions from recruiting new members, also known as “pyramiding,” is illegal in most states. Under the Texas Deceptive Trade Practices Act, pyramid promotion is a state jail felony punishable by imprisonment for up to two years and a fine of up to \$10,000.

Independent Contractor: An independent contractor is an individual who, in the pursuit of an independent business, undertakes a specific type of work for other individuals using his or her own means and methods without submitting to the control of the other individuals with respect to the details. Some factors for determining whether an individual is an independent contractor are:

- the independent nature of the business;
- the obligation to furnish tools, supplies, and materials necessary to perform the job; and
- the right to control the progress of the work, excepting the final result.

(*Pitchfork Land & Cattle Co. v. King*, 162 Tex. 331, 346 S.W.2d 598 (1961))

Additionally, TWC uses [Form C-8, Employment Status—A Comparative Approach](https://texreg.sos.state.tx.us/fids/200700686-1.pdf), found in 40 TAC §821.5, to help distinguish between independent contractors and employers. See <https://texreg.sos.state.tx.us/fids/200700686-1.pdf>.

Business Opportunity: Under Chapter 51 of the Texas Business and Commerce Code, a business opportunity is regulated by law if:

- it requires the buyer to make an investment to start the business;
- the seller promises that the buyer will earn, or is likely to earn, a profit exceeding the initial investment; and
- the seller will:
 - provide locations or help find locations that are not owned or leased by the buyer or seller for the use or operation of the products, equipment, supplies, or services;
 - provide a sales, production, or marketing program (this does not apply to franchise start-ups); or
 - buy back, or is likely to buy back, products, supplies, or equipment that the buyer purchased or a product that the buyer made, produced, fabricated, grew, or bred using in whole or in part the products, supplies, equipment, or services that the seller initially sold, leased, or offered for sale or lease to the buyer.

The seller must provide the following to the buyer at least 10 days before the buyer signs a contract or makes a financial investment:

- names and addresses of all individuals affiliated with the seller in the business;
- a copy of the seller’s current financial statement;
- a complete description of the services the seller agrees to perform for the buyer;

- if training is promised, a description of the training and travel and lodging costs;
- if services are promised, a description of the services provided, and agreements made with the owners or managers of business locations; and
- full disclosure of any adjudication resulting from a bankruptcy or a civil suit involving fraud or embezzlement in the past seven years.

APPENDIX C: ENTITY AUTHENTICATION RESOURCES

Verify the authenticity of an employer's identity by doing any of the following:

- Check that the web address of the company website matches the web address provided by the employer.
- Check that the company email address includes the company name.
- Ask the following questions:
 - Are you the point of contact for your business?
 - What is your job title?
 - What is your telephone number?
 - What is your fax number?
 - Is your job opening in Texas?
 - What are the principal activities or products manufactured by your company?
- Check the Employer Master File (mainframe) to search for a TWC tax ID using the entity's business telephone number or business address.
- If an employer account for the entity already exists in WorkInTexas.com, check the *Case Notes* section to determine the employer's current standing in the system, and note any problems previously reported regarding this employer.
- Check the *New Employer List* available in the TWIST reference tables.
- Look for company listings in local telephone books or [online yellow pages](#).
- Check with the [Better Business Bureau](http://www.bbb.org) (<http://www.bbb.org>) to see if there are any reports on the company.
- Refer to the online version of [Especially for Texas Employers](#) and consult the index to find [the ABC test](#) for ascertaining whether an entity is an independent contractor or a contract labor employer (http://www.twc.state.tx.us/news/efte/ics_contract_labor.html).

APPENDIX D: ENSURING THE QUALITY OF VETERAN JOB SEEKERS' REGISTRATIONS

Boards must continue to follow all other guidance on applying priority of service for veterans to state- and US Department of Labor (DOL)–funded programs within the Texas workforce system.

WorkInTexas.com is programmed to provide veteran job seekers with priority of service. Among a group of equally qualified applicants, veteran job seekers' registrations that match an internal job order are displayed above nonveteran job seekers' registrations on the *Job Order Statistics/Applicants* page, which can be viewed by the employer and Workforce Solutions Office staff. To ensure that the priority of service feature works efficiently and that veterans are presented to employers searching for job candidates effectively, it is critical that veterans have complete registrations in WorkInTexas.com.

While WorkInTexas.com is a self-service system, some individuals may require assistance in completing or improving their registrations from Workforce Solutions Office staff. To that end, staff is required to provide individuals with assistance with their registrations, including the *Background* and *Résumé* sections. New veteran job seekers who have registered in WorkInTexas.com are listed the following day on the Workforce Solutions Office staff dashboard in order to assist staff in proactively identifying veteran customers who may be in need of such services.

In Workforce Solutions Offices **with** Disabled Veterans' Outreach Program (DVOP) specialists or Local Veterans' Employment Representatives (LVERs), registration review must be part of the services that veterans receive from DVOP/LVER staff. However, not all veterans in these Workforce Solutions Offices will receive services from DVOP/LVER staff. It is important that Workforce Solutions Office staff does not assume that, due to the presence of DVOP/LVER staff, all veteran registrations have been reviewed. It is recommended that Workforce Solutions Office staff coordinate with DVOP/LVER staff on providing services to veterans.

In Workforce Solutions Offices **without** DVOP/LVER staff, it is important to establish a process for Workforce Solutions Office staff to review the new veteran job seeker registrations and, if appropriate, contact veteran job seekers to offer assistance and explain the importance of a complete registration in matching to a job order and being hired.

The following is provided as an example of a registration review process for Workforce Solutions Offices without DVOP/LVER staff.

When new veteran job seeker registrations are listed in WorkInTexas.com each day, Workforce Solutions Office staff closely reviews the registrations, including the *Background*

and *Résumé* sections and, if necessary, calls or emails veteran job seekers to discuss any suggested modifications or enhancements to the registrations.

If a veteran does not receive a job match within a reasonable amount of time following the modification or enhancement to the registration, Workforce Solutions Office staff follows up with the veteran and offers additional staff-assisted services to enhance the marketability of the veteran job seeker's registration.