

SDWORKS JOB ORDERS

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GENERAL JOB ORDER REQUIREMENTS

Verified employers can directly post job orders to SDWORKS. For additional information and guidance, review SDWORKS Employer Accounts [Resource 30](#). For technical assistance, please contact the [Job Service office](#) covering the area of employer's worksite.

DLR reserves the right to remove job orders from SDWORKS.

SDWORKS Job Order

- Must be listed under the actual employer and include the name of the employer of record.
- Identify immediate job vacancy expected to be filled.
- Position must be located within the state of South Dakota or within the adjacent counties of the South Dakota border.
- Represent an employer/employee relationship. Businesses seeking independent contractors do not meet the definition of an employer/employee relationship. **If the individual is to be compensated as an independent contractor and not as an employee, the job order may not be posted.**

Exception: *Non-Paid Internships that meet the "primary beneficiary test" are excluded from this requirement.*

- Cannot describe work situations that conflict with federal and state compensation laws such as, but not limited to, the Fair Labor Standards Act (29, U.S.C. Chapter 8), South Dakota Minimum Wage (SDCL 60-11-3, 60-11-3.2) or Labor Laws (SDCL 60-12; 29 Code of Federal Regulation, Part 570).
- In compliance with *20 CFR §652.9*. DLR will not provide job referrals on job orders representing positions that are vacant due to an active labor dispute involving a work stoppage.
- Cannot require applicants to pay a fee to be considered for employment, pay for employer-provided training to be considered for employment, make an investment in the business to be considered for employment, make an arrangement to pay the advertising employer or third-party acting on behalf of the employer.
- Reflect the appropriate O*NET code that represents the occupation and job duties.
 - Job order should be coded using the appropriate *Occupation Information Network* (O*NET) code. Use of the correct code is critical to ensure the best match is made with job seekers. If an employer is unsure which O*Net code to use, refer to [O*NET OnLine](#) for assistance.

Example: *If the job vacancy is housekeeping, the O*NET code should be for housekeeping. The O*NET code should not be for healthcare, even if in a clinical setting.*

Job Order Status

Job orders posted in SDWORKS will automatically close in 45 days unless the job order is manually extended in SDWORKS. If an employer wants to re-post a job order after it has closed, they should NOT re-open a closed job order. Rather, they should open a new job order and copy an existing job order.

Questionable Job Orders

If a job order does not meet applicable employment laws or comply with DLR policy, DLR staff must notify the person who submitted the job order and allow an opportunity to amend the contents of the job order.

Fraudulent Job orders

Job seekers who believe they have information concerning a scam have the right to notify the State Attorney General's Office of Consumer Protection at 605.773.4400 or 1.800.300.1986.

Suspicious job orders should be reported *immediately* to SDWORKSPUB@state.sd.us.

*20 CFR §652.9
Wagner-Peyser Act §13(b)(1)*

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FOREIGN LABOR CERTIFICATION JOB ORDERS

Foreign Labor Certification (FLC) can be obtained by an employer to fill vacancies when they are unable to find qualified applicants locally. This certification is obtained from U.S. DOL by certifying there are no qualified workers available in the United States willing to accept the job.

When a FLC application is filed with U.S. DOL, the employer must place a job listing in SDWORKS for the required amount of time.¹ Employers are required to advertise and list a FLC job order in SDWORKS with the job service office in the service area of intended employment.

FLC job orders are not to be updated, closed, or otherwise modified by DLR staff due to compliance with federal rules and regulations.

DLR staff should report any issues with FLC job orders to FLC State Office, including but not limited to:

- Uncooperative employers.
- Employers indicating to applicants that they do not have an opening, etc.

DLR staff assigned to FLC should manage the referral procedures for FLC job orders as indicated and approved by the FLC State Office.

H-2A – Agriculture Temporary

H-2A job orders must be written by DLR staff within 1-2 business days whenever possible and should be opened immediately when written. If a delay of more than three days is anticipated, the FLC State Office must be notified and provided a reason for the delay. Delays are reported to the National Processing Center (NPC).

If a request for out of state job order is received, it should be sent to the FLC State Office.

If an applicant from another state contacts a job service office regarding a South Dakota H-2A job order, any information outlined in the job order may be provided to the individual. If an applicant has an inquiry about a job order from a state other than South Dakota, please have the individual contact that respective state.

DLR staff should schedule and inspect housing units requested by the FLC State Office and provide housing inspection information as required under federal statute.

¹ The FLC State Office will advise offices of mandatory listing times per current federal FLC regulations for H-2A job orders.

H-2B – Non-Agriculture Temporary

The South Dakota State Workforce Agency (SWA) has an established self-service system that allows employers, agents, and law firms to write job orders and view all necessary information.

<https://www.southdakotaworks.org/vosnet/Default.aspx>. If technical assistance is needed with the SDWORKS system to create an employer account or place a job order, please contact the South Dakota SWA at FLC@state.sd.us.

If using an agent or law firm, they will need to create a Third Party Agent (TPA) account and then add all of the applicable employers to be authorized along with uploading proof of authorization (G-28 or authorization statement/contract) for each employer.

H-2B job orders will be automatically opened by the self-service system. It is the responsibility of the employer or TPA to contact the South Dakota SWA if you wish to have the job order placed on hold until the recruitment period has begun.

Job orders entered in SDWORKS in connection with an H-2B application should have indicated in the “Other Information” section, the H-2B indicator marked as ‘Yes’.

20 CFR 655.4

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AGRICULTURAL RECRUITMENT SYSTEM JOB ORDERS

The Agricultural Recruitment System (ARS) provides both employers and workers with recruitment and referral services for temporary or seasonal employment in agriculture through the job order process.

Definitions

Definitions used in this policy can be found in Definitions [Policy 9.2](#):

- Agricultural employer
- Clearance order
- Clearance system
- ETA Regional Office
- Intrastate clearance order
- Interstate clearance order
- Local Job Service Office order holder
- Supply Job Service Office
- Supply State Temporary or Seasonal Position

Local Recruitment

Prior to exploring the ARS, a job service office must attempt to find sufficient workers within the local labor market area or anticipates a shortage of local workers for the job order.

Examples of finding sufficient workers in the local labor market area include:

- Post the job order in SDWORKS for the local workforce to view and apply for the job.
- Review the current list of participants seeking jobs to see if there are any qualified and interested in the job and make a job referral to the job order.

Examples of anticipating a shortage of local workers for the job order include:

- Local market being recently tested already.
- Data supporting a labor shortage for the agricultural workforce.
- Other employers in the industry report labor shortages.

If the job service office and employer have attempted and haven't been successful in obtaining sufficient workers in the local labor market area or the job service office anticipates a shortage of local workers, then the job order may be placed into the ARS as an intrastate (within SD) clearance job order.

Intrastate Clearance Job Order

All job service offices must promote the ARS to agricultural employers seeking employment and help complete any ARS job orders.

Examples of promoting the ARS include:

1. Informing an agricultural business of the ARS.
2. Hanging posters of the ARS in public areas of the job service office.
3. Going over the Employment and Training Administration (ETA) Forms 790 and 790B found on the [ARS SharePoint Page](#)

If an agricultural employer wants to use the ARS, the job service office must help the employer complete the ETA Form 790 and 790B. The Job Service office must ensure the ETA Form 790 and 790B is:

1. Complete, including stating all the material terms and conditions of employment as described in [20 CFR 653.501\(c\) \(1\) \(iv\)](#).
2. Does not contain unlawful discriminatory specifications (e.g. Required to be male).
3. Signed by the employer.
4. Provides wages and working conditions to meet prevailing wages and working conditions for similarly employed farm workers.
5. Agrees to provide or pay for transportation of workers and their families on at least the same terms as is commonly provided by the local employers to farmworkers and their families.

Once the form is complete, submit it to the State Monitor Advocate (SMA) by using the [ARS Submission Form](#) found on the ARS SharePoint page located on the MSFW Resource page for final review and approval.

The SMA will review the completed form for approval. If approved, the SMA will inform the local job service office order holder the job order has been approved. The local job service office order holder can then send the order form to supply job service offices of their choice.

The **Local Job Service Office Order Holder** must provide a copy of the approved clearance order to all the selected **Supply Job Service Offices**.

Supply Job Service Office Responsibilities and Requirements for ARS Intrastate Job Order

Upon receiving the Clearance Order, the Supply Job Service Offices must:

1. Add the clearance order to SDWORKS and suppress the employer information to require individuals to contact the job service office. This is to ensure an adequate explanation of the job order is provided by the job service office to the job seeker.
2. Actively recruit workers for referral.
3. Assist all farmworkers, upon request in their native language, to understand the terms and conditions of employment set forth in intrastate and interstate clearance orders and must provide such workers with checklists in their native language showing wage payment schedules, working conditions, and other material specifications of the clearance order.

Interstate Clearance Job Orders

An interstate (out-of-state) ARS clearance order is requested from the ETA Regional Office when an intrastate (in-state) order is unsuccessful.

The job service office would submit the previously completed ETA Form 790 and 790B to the SMA. The SMA will review the completed form and submit it to the ETA Regional Office for approval

ETA regional office (U.S. DOL) must review and approve the order within 10 business days of its receipt of the order, and the Regional Administrator or his/her designee must approve the areas of supply to which the order will be extended. Any denial by the Regional Administrator or his/her designee must be in writing and state the reasons for the denial.

The ETA regional office will review and provide a list of other out-of-state Job Service Offices the order is approved for. The **Local Job Service Office Order Holder** must provide each of the approved offices an electronic copy of the clearance order to advertise in their serving area.

The supply state has the option to reject the order. In the event a supply state local office rejects a clearance order, the reasons for the rejection must be documented and submitted to the ETA Regional Administrator having jurisdiction over the job service office to review the reasons and determine if they accept the rejection.

The **Local Job Service Office Order Holder** must conduct field checks for all filled clearance orders pursuant to the Field Checks section of this document.

Field Checks

The **Local Job Service Office Order Holder** must notify the employer in writing that the Job Service Office must conduct random, unannounced field checks to determine and document if the terms of the clearance order are being met.

Field Checks must be in compliance with [20 CFR 653.503 Field checks](#). Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, the ES must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

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