

§ 658.426

20 CFR Ch. V (4–1–12 Edition)

Federal statutes under which they are promulgated.

(b) Based on the entire record, including any legal briefs, the record before the State agency, the investigation (if any) and determination of the Regional Administrator, and evidence provided at the hearing, the DOL Administrative Law Judge shall prepare a written decision. The DOL Administrative Law Judge shall send a copy of the decision stating the findings and conclusions of law and fact and the reasons therefor to the parties to the hearing, including the State agency, the Regional Administrator, the Administrator, and the Solicitor, and to entities filing amicus briefs (if any).

(c) The decision of the DOL Administrative Law Judge shall be the final decision of the Secretary.

§ 658.426 Complaints against USES.

Complaints alleging that an ETA regional office or the national office of USES has violated JS regulations should be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, DC 20210. Such complaints should include:

(a) The allegations of wrong-doing, (b) the date of the incident, (c) location of the incident, (d) who the complaint is against, and (e) any other relevant information available to the complainant. The Assistant Secretary or the Regional Administrator as designated shall make a determination and respond to the complainant after investigation of the complaint.

Subpart F—Discontinuation of Services to Employers by the Job Service System

§ 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services provided pursuant to 20 CFR part 653 to employers by the USES, including State agencies.

§ 658.501 Basis for discontinuation of services.

(a) The State agency shall initiate procedures for discontinuation of services to employers who:

(1) Submit and refuse to alter or withdraw job orders containing specifications which are contrary to employment-related laws;

(2) Submit job orders and refuse to provide assurances, in accordance with paragraph (d) above, that the jobs offered are in compliance with employment-related laws, or to withdraw such job orders;

(3) Are found through field checks or otherwise to have either misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders;

(4) 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 the JS by that enforcement agency;

(5) Are found to have violated JS regulations pursuant to § 658.416(d)(4);

(6) Refuse to accept qualified workers referred through the clearance system;

(7) Refuse to cooperate in the conduct of field checks conducted pursuant to § 653.503; or

(8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to paragraphs (a)(1) through (6) of this section.

(b) The State agency may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this subpart at §§ 658.501 through 658.502 would cause substantial harm to a significant number of workers. In such instances, procedures at § 658.503 (b) *et seq.* shall be followed.

(c) For employers who are alleged to have not complied with the terms of the temporary labor certification, State agencies shall notify the Regional Administrator of the alleged non-compliance for investigation and pursuant to § 655.210 consideration of ineligibility for subsequent temporary labor certification.

§ 658.502 Notification to employers.

(a) The State agency shall notify the employer in writing that it intends to

discontinue the provision of JS services pursuant to 20 CFR part 653 and the reason therefore:

(1) Where the decision is based on submittal and refusal to alter or to withdraw job orders containing specifications contrary to employment-related laws, the State agency shall specify the date the order was submitted, the job order involved, the specifications contrary to employment-related laws and the laws involved. The employer shall be notified in writing that all JS services will be terminated in 20 working days unless the employer within that time:

- (i) Provides adequate evidence that the specifications are not contrary to employment-related laws, or
- (ii) Withdraws the specifications and resubmits the job order in compliance with all employment-related laws, or
- (iii) If the job is no longer available makes assurances that all future job orders submitted will be in compliance with all employment-related laws, or
- (iv) Requests a hearing from the State agency pursuant to § 658.417.

(2) Where the decision is based on the employer's submittal of an order and refusal to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the State agency shall specify the date the order was submitted, the job order involved and the assurances involved. The employer shall be notified that all JS services will be terminated within 20 working days unless the employer within that time:

- (i) Resubmits the order with the appropriate assurances,
- (ii) If the job is no longer available, make assurances that all future job orders submitted will contain all necessary assurances that the job offered is in compliance with employment-related laws, or
- (iii) Requests a hearing from the State agency pursuant to § 658.417.

(3) Where the decision is based on a finding that the employer has misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders, the State agency shall specify the basis for that determination. The employer shall be notified that all JS services will be termi-

nated in 20 working days unless the employer within that time:

- (i) Provides adequate evidence that terms and conditions of employment were not misrepresented, or
- (ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders, or
- (iii) Provides resolution of a complaint which is satisfactory to a complainant referred by the JS, and
- (iv) Provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances, or
- (v) Requests a hearing from the State agency pursuant to § 658.417.

(4) Where the decision is based on a final determination by an enforcement agency that the employer-related laws, the State agency shall specify the determination. The employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

- (i) Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws, or
- (ii) Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made, and
- (iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(5) Where the decision is based on a finding of a violation of JS regulations under § 658.416(d)(4), the State agency shall specify the finding. The employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

- (i) Provides adequate evidence that the employer did not violate JS regulations, or
- (ii) Provides adequate evidence that appropriate restitution has been made or remedial action taken, and
- (iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been

§ 658.503

corrected and the same or similar violations are not likely to occur in the future, or

(iv) Requests a hearing from the State agency pursuant to § 658.417.

(6) Where the decision is based on an employer's failure to accept qualified workers referred through the clearance system, the State agency shall specify the workers referred and not accepted. The employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the workers were accepted, or

(ii) Provides adequate evidence that the workers were not available to accept the job, or

(iii) Provides adequate evidence that the workers were not qualified, and

(iv) Provides adequate assurances that qualified workers referred in the future will be accepted; or

(v) Requests a hearing from the State agency pursuant to § 658.417.

(7) Where the decision is based on lack of cooperation in the conduct of field checks, the State agency shall specify the lack of cooperation, the employer shall be notified that all JS services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that he did cooperate, or

(ii) Cooperates immediately in the conduct of field checks, and

(iii) Provides assurances that he/she will cooperate in future field checks in further activity, or

(iv) Requests a hearing from the State agency pursuant to § 658.417.

(b) If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, he/she must at the same time request a hearing if such hearing is desired in the event that the State agency does not accept the documentary evidence or assurances as adequate.

(c) Where the decision is based on repeated initiation of procedures for discontinuation of services, the employer shall be notified that services have been terminated.

(d) If the employer makes a timely request for a hearing, in accordance with this section, the State agency

20 CFR Ch. V (4-1-12 Edition)

shall follow procedures set forth at § 658.417 and notify the complainant whenever the discontinuation of services is based on a complaint pursuant to § 658.501(a)(5).

§ 658.503 Discontinuation of services.

(a) If the employer does not provide a satisfactory response in accordance with § 658.502, within 20 working days, or has not requested a hearing, the State agency shall immediately terminate services to the employer.

(b) If services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, the State agency shall notify the ETA regional office immediately.

§ 658.504 Reinstatement of services.

(a) Services may be reinstated to an employer after discontinuation under § 658.503, if:

(1) The State is ordered to do so by a Federal Administrative Law Judge or Regional Administrator, or

(2)(i) The employer provides adequate evidence that any policies, procedures or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar difficulties are not likely to occur in the future, and

(ii) The employer provides adequate evidence that the employer has responded adequately to any findings of an enforcement agency, State JS agency, or USES, including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.

(b) The State agency shall notify, within 20 working days, the employer requesting reinstatement whether his request has been granted. If the State denies the request for reinstatement, the basis for the denial shall be specified and the employer shall be notified that he/she may request a hearing within 20 working days.

(c) If the employer makes a timely request for a hearing, the State agency shall follow the procedures set forth at § 658.417.

(d) The State agency shall reinstate services to an employer if ordered to do so by a State hearing officer, Regional Administrator, or Federal Administrative Law Judge as a result of a hearing

offered pursuant to paragraph (c) of this section.

Subpart G—Review and Assessment of State Agency Compliance With Job Service Regulations

AUTHORITY: Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.* 5 U.S.C. 301 *et seq.*

§ 658.600 Scope and purpose of subpart.

This subpart sets forth the regulations governing review and assessment of State agency compliance with the Job Service regulations at 20 CFR parts 601, 602, 603, 604, 620, 621, 651–658 and 29 CFR part 8. All recordkeeping and reporting requirements contained in parts 653 and 658 have been approved by the Office of Management and Budget as required by the Federal Reports Act of 1942.

§ 658.601 State agency responsibility.

(a) Each State agency shall establish and maintain a self-appraisal system for job service operations to determine success in reaching goals and to correct deficiencies in performance. The self-appraisal system shall include numerical (quantitative) appraisal and non-numerical (qualitative) appraisal.

(1) Numerical appraisal at the local office level shall be conducted as follows:

(i) Performance shall be measured on a quarterly-basis against planned service levels as stated in the State Program and Budget Plan (PBP). The State plan shall be consistent with numerical goals contained in local office plans.

(ii) To appraise numerical activities/indicators, actual results as shown on the Employment Security Automated Reporting System (ESARS) tables and Cost Accounting Reports shall be compared to planned levels. Variances between achievement and plan shall be identified.

(iii) When the numerical appraisal of required activities/indicators identifies significant variances from planned levels, additional analysis shall be conducted to isolate possible contributing factors. This data analysis shall in-

clude, as appropriate, comparisons to past performance, attainment of PBP goals and consideration of pertinent non-numerical factors.

(iv) Results of local office numerical reviews shall be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(6) shall be developed to address these deficiencies.

(v) The result of local office appraisal, including corrective action plans, shall be communicated in writing to the next higher level of authority for review. This review shall cover adequacy of analysis, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district office, a report describing local office performance within the area or district jurisdiction shall be communicated to the central office on a quarterly basis.

(2) Numerical appraisal at the central office level shall be conducted as follows:

(i) Performance shall be measured on a quarterly basis against planned service levels as stated in the State Program and Budget Plan (PBP). The State plan shall be consistent with numerical goals contained in local office plans.

(ii) To appraise these key numerical activities/indicators, actual results as shown on the Employment Security Automated Reporting System (ESARS) tables and Cost Accounting Reports shall be compared to planned levels. Variances between achievement and plan shall be identified.

(iii) The central office shall review Statewide data, and performance against planned service levels as stated in the State Program and Budget Plan (PBP) on at least a quarterly basis to identify significant Statewide deficiencies and to determine the need for additional analysis, including identification of trends, comparisons to past performance, and attainment of PBP goals.

(iv) Results of numerical reviews shall be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(5) of this section shall be developed to address these deficiencies. These plans shall be submitted to the ETA