NEBRASKA ADMINISTRATIVE CODE

TITLE 226 - DEPARTMENT OF LABOR

CHAPTER 1 - DISCONTINUATION OF SERVICES TO EMPLOYERS

001. This regulation is adopted pursuant to *Neb. Rev. Stat.* §§48-607 and 48-662.

002. The Nebraska Workforce Development, Department of Labor provides placement and other services to all employers within the State. There may be instances when a discontinuation of services to a particular employer is warranted. It is recognized that employers have an interest in such services and that termination of the services should occur only if the process, as outlined in this chapter, is followed.

003. The Nebraska Workforce Development, Department of Labor may discontinue services to employers within the following categories:

A. An employer who submits and refuses to withdraw job orders containing specifications which are contrary to employment-related laws.

B. An employer who submits job orders and refuses to provide assurances that the jobs offered are in compliance with employment-related laws.

C. An employer who has been found to have either misrepresented the terms or conditions of employment specified on job orders or failed to comply with assurances made on job orders.

D. An employer who has been found by a final determination of an appropriate enforcement agency to have violated employment-related laws and that enforcement agency has provided notification of the final determination to the Nebraska Workforce Development, Department of Labor.

E. An employer who has been found to have violated any statutes or regulations governing the Nebraska Workforce Development, Department of Labor.

F. An employer who refuses to accept qualified workers referred through the clearance system.

G. An employer who refuses to cooperate in the conduct of field checks conducted pursuant to 20 C.F.R. 653.503.

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H. Any employer who repeatedly causes the initiation of procedures for discontinuation of services pursuant to paragraphs 003(A)-(F) above.

004. The Nebraska Workforce Development, Department of Labor may discontinue services immediately if, in the judgment of the Commissioner of Labor, the exhausting of the appeals process would cause substantial harm to a significant number of workers. In such instances, the process described under paragraph 005 shall not be followed.

005. If the Nebraska Workforce Development, Department of Labor intends to discontinue services to an employer, it shall notify the employer in writing of such intent. The notice shall contain a statement explaining the reason for the discontinuation of services.

A. If services are being discontinued due to paragraph 003(A), the Nebraska Workforce Development, Department of Labor will inform the employer of the job order involved, the date the job order was submitted, and the specifications which are contrary to employment-related laws. The notice shall also indicate that services will be terminated in twenty working days unless the employer within that time: (1) provides adequate evidence that the specifications are not contrary to employment-related laws; or (2) withdraws the specifications and resubmits the job order in compliance with all employment-related laws; or (3) if the job is no longer available, makes assurances in writing that all future job orders will be in compliance with all employment-related laws; or (4) requests a hearing.

B. If the services are being discontinued due to paragraph 003(B), the Nebraska Workforce Development, Department of Labor shall specify the job order, the date it was submitted, and the assurances involved. The employer shall be notified that all services will be terminated in twenty working days unless the employer, within that time: (1) resubmits the job order with appropriate assurances; or (2) if the job order is no longer available, makes assurances in writing that all future job orders submitted will contain necessary assurances that the job offered is in compliance with employment-related laws; or (3) requests a hearing.

C. If services are to be discontinued due to paragraph 003(C), the Nebraska Workforce Development, Department of Labor shall specify the basis for the determination. The employer shall be notified that all services will be terminated in twenty working days unless the employer, within that time: (1) provides adequate evidence that terms and conditions of employment were not misrepresented; or (2) provides adequate evidence that there was full compliance with the assurances made on job orders; or (3) provides resolution of a complaint which is satisfactory to a complainant referred by the Nebraska Workforce Development, Department of Labor; or (4) 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 (5) requests a hearing.

D. If services are to be discontinued due to paragraph 003(D), the Nebraska Workforce Development, Department of Labor shall specify the determination involved. The employer shall be notified that all services will be terminated in

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twenty working days unless the employer, within that time: (1) provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws; or (2) provides adequate evidence that the appropriate fines have been paid and/or restitution has been made; or (3) provides assurances that 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.

E. If services are to be discontinued due to paragraph 003(E), the Nebraska Workforce Development, Department of Labor shall specify the finding involved. The employer shall be notified that all services will be terminated in twenty working days unless the employer, within that time: (1) provides adequate evidence that the employer did not violate Nebraska Workforce Development, Department of Labor regulations; or (2) provides adequate evidence that restitution has been made or remedial action taken; or (3) 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; or (4) requests a hearing.

F. If the services are to be discontinued due to paragraph 003(F), the Nebraska Workforce Development, Department of Labor shall specify the workers referred and not accepted. The employer shall be notified that all services will be terminated in twenty working days unless the employer, within that time: (1) provides adequate evidence that the workers were accepted; or (2) provides adequate evidence that the workers were not available to accept the job; or (3) provides adequate evidence that the workers were not qualified; or (4) provides adequate assurances that qualified workers referred in the future will be accepted; or (5) requests a hearing.

G. If services are to be discontinued due to paragraph 003(G), the Nebraska Workforce Development, Department of Labor shall specify the basis for a finding of a lack of cooperation. The employer shall be notified that all services will be terminated in twenty working days unless the employer, within that time: (1) provides adequate evidence of cooperation; or (2) cooperates immediately in the conduct of field checks; or (3) provides assurances of future cooperation in future field checks and further activity; or (4) requests a hearing.

006. If an employer chooses to respond to requirements in paragraphs 005 by providing documentary evidence or assurances, he/she must, at the same time, request a hearing if hearing is desired in the event the Nebraska Workforce Development, Department of Labor does not accept the documentary evidence or assurances as adequate.

007. If services are to be discontinued due to the repeated initiation of procedures for discontinuation of services, the employer shall be notified that services have been terminated.

008. If the employer does not provide a satisfactory response in accordance with paragraph 005 or does not request a hearing, the Nebraska Workforce Development, Department of

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Labor will immediately terminate services to that employer. If a hearing is requested by an employer, it shall be provided in accordance with 223 NAC 5. To the extent there is conflict between these regulations and the regulation governing the hearing process under 223 NAC 5, these regulations shall prevail. The hearing officer shall, following a hearing, issue a written decision which will not become final until it is either approved or disapproved by the Commissioner of Labor of the State of Nebraska.

009. Once discontinued, services may be reinstated to an employer if:

A. The Nebraska Workforce Development, Department of Labor is ordered to do so by an appropriate federal authority, or

B. 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, or

C. The employer provides adequate evidence that he/she has responded adequately to any findings of an enforcement agency, the Nebraska Workforce Development, Department of Labor, or the United States Department of Labor, including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.

010. An employer who desires to have services reinstated shall request it in writing to the Commissioner of Labor. The request shall indicate the basis upon which reinstatement is being sought. The Nebraska Workforce Development, Department of Labor shall notify the employer within twenty working days whether the request is granted or denied. If the request is denied, the employer shall be notified of the basis for the denial and that a hearing pursuant to paragraph 008 will be provided if a written request is received by the Nebraska Job Service within twenty working days from mailing of the notice.

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