

WorkSource Information Notice (WIN)

WorkSource Standards & Integration Division

Policy Clarification | Q&A | Other

Number: WIN - 0008
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TO: Workforce Development System Partners
FROM: Amy Smith-Rubeck, Deputy Assistant Commissioner
SUBJECT: Avoiding Potentially Discriminatory Specifications in Job Orders

Purpose:

To respond to questions regarding employer's requirements in job orders pertaining to age, gender, ability to speak and write English or eligibility to work in the United States. This document provides additional guidance on the Job Order Policy #1006 Revision 1 and does not replace any requirement(s) in the policy.

Action Required:

Workforce Development Councils and their contractors, as well as Employment Security Area Directors, must distribute this guidance broadly throughout the system to ensure that WorkSource System staff are familiar with its content and requirements.

Summary:

1. *When is it appropriate to require applicants "speak, read, write, and understand English" in a job order?*

Generally, an English proficiency requirement is permissible only when it is related to the performance of the particular position. Because the degree of proficiency required may vary from one position to the next, staff should not allow English proficiency requirements that apply uniformly to a broad range of dissimilar jobs.

Job orders containing language proficiency requirements must clearly specify the job-related necessity and each requirement must directly relate to performance of an essential part of the job. Staff must not assume the position requires someone to speak, read, write, and understand English fluently. A language requirement should specify the minimum level of fluency need to perform an essential part of the job. For example, cashiering at a fast food restaurant or driving a vehicle short distances on private land may not require a high level of English fluency.

In discussions with employers it may be determined that the requirement is not needed if a bilingual

supervisor or bilingual coworkers can help the applicant with the language proficiency issue.

The following are examples of acceptable requirements

- “Sales Associate must speak English at a level to effectively communicate with English speaking customers.”
- “Emergency drills and responses at the plant are conducted in English. Must be able to speak and understand English well enough to assist employees during these events to help ensure their safety in life-threatening situations.”

The following example would *not* be acceptable for a graphic designer:

- “Must be able to speak, read, and write English for safety reasons.”

It is not clear why and how a graphic designer’s English fluency would affect safety.

However, if the language requirement is needed for job performance, the statement may read:

- “Must be able to speak, read and write English well enough to read technical documents and effectively communicate with team members.”

If an employer requests a language requirement and it is *clearly* justified, include it in the Job Requirements of the job order, along with the description of why it is needed to perform this particular job; then record the information in the SKIES employer record in the notes section for that job order. Otherwise, advise the employer that to put the requirement in the job requirements section of the job order they will need to provide a copy of the BFOQ issued by the HRC or EEOC.

2. What age requirements or restrictions may be included in job orders?

Age restrictions or limitations (younger than 18 or older than 40) are not allowed in job orders unless supported by a BFOQ or a federal or state law. WorkSource staff cannot accept job order instructions restricting the age of applicants or refuse to refer individuals based solely on their age unless supported by law or a BFOQ.

When age restrictions are included in the Job Requirements section of the job order, the reason should be clearly explained. If the restriction is the result of a formal BFOQ, a copy must be received from the employer noted in the SKIES employer record, and maintained in an identifiable file onsite.

3. What if an employer wants to hire minors?

In Washington state, employers cannot employ *anyone* under the age of 18, *unless* they have obtained a minor work permit. An employer wanting to recruit minors to work must have a minor work permit and utilize the Parent/School Authorization Form for minor workers. WorkSource staff can verify if an employer has an active minor work permit on L&I’s website.

There are specific laws when employing minors, most of them established by the U.S. Department of Labor and enforced by Washington’s Department of Labor & Industries. Some of these laws involve additional age restrictions, depending on how hazardous job duties are, with some duties

being prohibited for minor workers. There are also detailed laws about how many hours per day or week minors can work, and these are further dependent on age and whether school is in session. Specifics on all these laws can be found in L&I's [Teen Workers](#) website. All WorkSource staff involved in either taking job orders from employers or referring minor job seekers must be aware of and comply with these laws and restrictions.

4. An employer wants to specify applicants “must be 18 years or older.” Can I list that as a job requirement?

As indicated in #3, all job applicants in Washington state *must* be at least 18 years of age to be legally hired, *unless the employer has a minor work permit*. For that reason, “must be 18 years or older” may be included.

5. An employer wants language in the job order stating applicants “must be legally entitled to work in the United States” or “applicants must provide employer with valid I-9 documentation.” Can I do that?

Federal Law requires all U.S. employers examine and verify the eligibility of each hired individual to be lawfully employed in the United States. In an effort to assist employers meet this requirement and to ensure WorkSource services are offered to authorized workers, all job seekers are required to respond to the question “Legally entitled to work in the U.S?” as part of the standard SKIES registration form prior to the delivery of services. When an employer makes a request to include job requirements or general language associated with employment eligibility verification in a job order, WorkSource staff must inform the employer of this existing standard procedure.

It is an advisable employment practice to treat all people the same in announcing the job, taking applications, interviewing, offering the job, verifying eligibility to work, hiring, and firing. WorkSource staff should also maintain consistent procedures when screening job seekers to ensure all applicants are treated similarly. No state standard currently exists for inserting employment eligibility verification language in job orders. For that reason, the requested language pertaining to employment eligibility requirements, though technically correct, must not be included in a job order.

6. Do some jobs require you to be a U.S. citizen?

Yes some jobs do, particularly those involving national security. Many jobs listed by government contractors, particularly military contractors, have this restriction. Be sure the employer clearly states that this requirement is specified in their contract before including it in the job order. If it is determined that it is a legal requirement of the job, include a statement under the Job Requirements section stating, “U.S. citizenship is a condition of employment required by law” and document in the notes section of the job order.

7. What if an employer requests language be added to the job order stating that they participate in the E-Verify Employment Eligibility Verification Program?

Federal law requires participating E-Verify employers to inform prospective employees of their participation through permanent signage and application materials. To assist E-Verify employers meet their obligation, employer requests to comply with E-verify notification requirements in a job order must be accommodated.

This must be done by inserting the following language “This employer participates in the E-Verify Program in order to verify the identity and work authorization of all newly hired employees” under the heading How to Apply/Request a Referral in the job order.

References:

- [Job Order Policy #1006 Revision 1](#)
- [Washington Department of Labor & Industries – Teen Workers](#)

Website:

<http://www.wa.gov/esd/policies/systems.htm>

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Attachments:

N/A