



MILWAUKEE OFFICE

230 West Wells Street, Room 800, Milwaukee, Wisconsin 53203
tel 414-278-7722 | toll-free 888-278-0633 | fax 414-278-7126
new caller / intake 855-947-2529 | www.legalaction.org

January 8th, 2020

Governor's Council on Workforce Investment
WI Dept. of Workforce Development
201 E Washington Ave
Madison, WI 53702

Submitted via survey and emailed to detwioa@dwd.wisconsin.gov.

Dear Governor's Council on Workforce Investment:

On behalf of Legal Action of Wisconsin's Farmworker Project, we offer these comments about Wisconsin's Program Year 2020-2023 (PY20-23) Workforce Innovation and Opportunity Act ("WIOA") Combined State Plan and its impact upon our clients. In making these comments, we are focused on the Wagner-Peyser Act Program section, specifically the Agricultural Outreach Plan ("AOP"). Thank you for the opportunity to provide feedback.

Legal Action of Wisconsin ("LAW") is the largest provider of free, high-quality, civil legal aid to low-income individuals in Wisconsin. We ensure access to justice for Wisconsin residents by protecting their housing, safety, family stability, livelihood, and economic security. Through our statewide Farmworker Project, our staff represent and advise migrant and seasonal farmworkers ("MSFWs") who perform agricultural work in Wisconsin and their families. We represent both U.S. workers and workers with H-2A visas with civil legal concerns including recruitment and hiring concerns, unpaid wages, unemployment insurance issues, public benefits access obstacles, and unsafe working and housing conditions.

Wagner-Peyser Program (Employment Services, pgs. 131-137, specifically Section 2)

Without articulated collaboration strategies between Unemployment Insurance ("UI") and Job Service staff, MSFWs will not have meaningful access to the UI and Job Service systems.

The UI Division's exclusive reliance on an online system to process UI claims has created further barriers for Wisconsin's MSFWs to access the UI and Job Service systems. Many members of Wisconsin's seasonal workforce are not computer literate and have limited English proficiency, but the WIOA Combined State Plan does not currently address these limitations. Currently, vital Spanish language information regarding the UI rules and requirements is almost always only distributed to claimants online. Additionally, all claims must be submitted through the online UI portal.

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Due to the barriers of the online UI system, Wisconsin's MSFWs have increased their reliance on *notarios* (individuals who represent themselves as qualified to offer legal advice or services concerning immigration or other matters of law but have no such qualification) to help them complete the UI process and file claims online. Due to the increased reliance on *notarios*, many farmworkers receive incorrect information regarding the UI rules and requirements, unfortunately leading farmworkers to receive overpayment determinations. For example, in LAW's experience representing farmworkers with UI issues, many workers receive "advice" from *notarios* which indicates that workers can do a "door to door" job search to meet the job search requirements. This is inaccurate and costly misinformation, that could be prevented by the UI Division being proactive and accessible to MSFWs, especially off-line. By closely collaborating with the Texas Workforce Solutions offices, the UI Division and Job could offer Wisconsin's farmworkers more meaningful access to the UI system and Job Service supports. For more information, please see WI Law Journal Article from 2017 (<https://wislawjournal.com/2017/11/22/migrant-workers-tripped-up-by-new-work-search-rules-slapped-with-fraud/>).

Further, current DWD policies bar Job Service staff from assisting farmworkers in completing UI applications or mailing UI appeals. These policies further disenfranchise Wisconsin's MSFWs because farmworkers are not provided the services they need to understand and access the UI system.

The WIOA Combined State Plan does not articulate ways in which the Division of Employment and Training and the UI Division will work together to ensure work search requirements assigned to Wisconsin's MSFWs are obtainable and appropriate for the labor market of farmworkers. Many of the home communities of Wisconsin's farmworkers face high levels of unemployment, and for this reason, farmworkers migrate to Wisconsin to seek agricultural jobs. Under the UI Division's current interpretation of what constitutes a valid work search, many MSFWs are not able to complete the required four work search activities each week. Wisconsin's laid off MSFWs further struggle with finding employers willing to hire or accept applications from prospective candidates who are only available for work during the agricultural off seasons. These specific concerns are not currently addressed by the WIOA Combined State Plan.

Wagner-Peyser Program (Agricultural Outreach Plan, pgs. 137-154)

The AOP does not clearly articulate how Wisconsin's domestic workforce will be informed of their right to receive jobs that are subject to the clearance order system.

The usage of the H-2A program has increased significantly in Wisconsin since 2013. It was reported there were 1,804 H-2A positions in Wisconsin in 2019, a 925% increase since 2013 (see DWD Bureau of Job Service 2019 Migrant and H-2A Worker Population Report).

20 CFR subpart B § 653.102 requires that "all SWAs must make job order information conspicuous and available to MSFWs by all reasonable means..." Further, 20 CFR subpart F § 653.501(d)(12) specifies "if the labor supply SWA accepts a clearance order, the SWA must actively recruit workers for referral..." " 20 CFR, Subpart F, § 653.500 mandates that the sub-section requirements apply to both MSFW and non-MSFW job seekers. However, few of Wisconsin's domestic MSFWs are aware of their right to apply for jobs listed in H-2A clearance orders. LAW's outreach workers have seen an increase of "segregated work crews" in which foreign H-2A workers perform one set of tasks and potentially qualified US workers work in parallel crews and may be unaware of their right to apply for H-2A jobs.

Workers experience barriers to accessing H-2A jobs if Job Service staff are not educating workers about these job opportunities and if Job Service call center staff are not properly trained to provide referrals and information to workers who seek more information. Additionally, many MSFWs are Spanish-only speakers who work long hours and face barriers to make calls during regular business hours.

Therefore, many MSFWs cannot benefit from Job Service call centers that are only available during traditional business hours and online resources that are not available in Spanish. Wisconsin's unified delivery of MSFW services could be used advantageously to ensure that that domestic MSFWs are aware of H-2A jobs that may be available.

Farmworker population changes may impact “significant” MSFW service areas. It is critical to consistently update analysis of migrant populations in order to identify and provide services to emerging populations.

The demographics of farmworkers are changing. Many MSFW are getting older (see <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#employment>). As illustrated in the 2019 DWD Bureau of Job Service Migrant Population report, there are more jobs in food processing now than in agricultural crop work. These changes in demographics and in type of agricultural work has caused changes to the “significant” MSFW population centers in Wisconsin. According to the 2019 DWD Migrant Population report, the counties with the most MSFWs (not including H-2A workers) were Fond du Lac County, Columbia County, Dodge County, Portage County and Barron County. These population shifts should shape the work of Job Service as they provide services to MSFW. It is important to study and identify where new “significant” service areas may develop so that Job Services can be best provided.

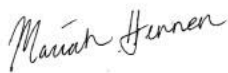
Additionally, the WIOA Combined State Plan offers very little analysis of the H-2A program and its impact on the farmworker population in Wisconsin. The lack of inclusion and analysis of the H-2A program is disingenuous to the current reality of agricultural labor in Wisconsin and does a disservice to Job Service staff trying to plan and provide effective services to MSFW and agricultural employers.

Migrant Law Enforcement (“MLE”) officers are critical to ensuring that farmworker rights are respected and that MSFW housing is safe and habitable. MLE officers are not Job Service outreach workers.

The WIOA Combined State Plan appears to include MLE officers as part of the Job Service outreach staff, which hurts MSFWs in Wisconsin. Job Service workers and MLE officers both serve important, but different, roles within an AOP. While the total number of farmworkers in Wisconsin is increasing (see DWD Bureau of Job Service 2019 Migrant and H-2A Worker Population Report), there are just two MLE officers to oversee and enforce all state labor protections related to MSFWs. The work of MLE officers is critical and requires committed time to complete properly - work that is disadvantaged by also doing Job Service outreach. Ultimately, requiring this split harms MSFWs in Wisconsin and Legal Action's clients.

In conclusion, activities under the Wagner-Peyser Act have a profound impact on Wisconsin MSFWs and their ability to obtain and maintain farm labor jobs, as well as to work with dignity and protect their rights. LAW is committed to serving Wisconsin's farmworkers and we appreciate the opportunity to provide comments on the WIOA Combined State Plan. We hope these comments will be taken into consideration as part of continuous efforts to improve the performance of these programs and their service to our state's migrant and seasonal farmworkers.

Sincerely,



Mariah Hennen
Legal Action of Wisconsin
Farmworker Project Program Manager



Erica Sweitzer-Beckman
Legal Action of Wisconsin
Farmworker Project Legal Director & Attorney