

5101:1-3-12

Ohio works first: work activities.**(A) Conflict with the Revised Code**

(1) Section (5) of Amended Substitute Senate Bill 238 of the 126th General Assembly (09/06) sets forth the following provision: Not later than September 30, 2006, the director of job and family services shall adopt rules as necessary for the state to comply with 42 U.S.C. 607(i)(2) (08/96). If necessary to bring the state into compliance with 42 U.S.C. 607(i)(2) (08/96), the rules may deviate from Chapter 5107. of the Revised Code. Rules adopted under this section that govern financial and other administrative requirements applicable to the department of job and family services and county departments of job and family services shall be adopted in accordance with section 111.15 of the Revised Code as if they were internal management rules. All other rules adopted under this section shall be adopted in accordance with Chapter 119. of the Revised Code.

(2) The county ~~department of job and family services~~ agency shall administer the work activity programs in accordance with the requirements contained in this rule and not in accordance with sections 5107.01, 5107.14, 5107.16, 5107.36, 5107.40, 5107.41, 5107.42, 5107.43, 5107.60, 5107.62, 5107.64, 5107.65, 5107.67 ~~and~~ 5107.68 ~~and~~ 5107.70 of the Revised Code. All applicable requirements contained in the Revised Code sections referenced have been incorporated in this rule.

~~(3) All applicable requirements contained in the Revised Code sections referenced in paragraph (A)(2) of this rule have been incorporated in this rule.~~

(B) ~~Work eligible individual~~ Who is a work eligible individual?

(1) A work eligible individual means an adult or minor head of household receiving Ohio works first (OWF) or a non-recipient parent living with a child who is in receipt of OWF unless the parent is:

(a) A minor parent who is not the head of household;

(b) A non-citizen who is not eligible to receive OWF due to his or her immigration status;

(c) A recipient of supplemental security income (SSI) benefits;

(d) A recipient of social security disability insurance (SSDI) benefits; or

(e) A parent providing care for a disabled family member, if the following criteria are met:

(i) The disabled family member must be living in that home; and

(ii) There is medical documentation to support the need for the parent to remain in the home to care for the disabled family member.

(2) Disability shall be deemed to exist when there is a physical or mental illness or impairment. The disability shall be supported by competent medical documentation and must be of such a debilitating nature as to reduce substantially or eliminate the individual's ability to work. The disability must be expected to last for a period of at least thirty days.

(C) ~~Appraisals and assessments~~ When should an appraisal or assessment be conducted and what should it include?

(1) As soon as possible after an assistance group submits an application to participate in OWF, the county agency that receives the application shall schedule and conduct an appraisal of each work eligible individual and each member of the assistance group who is an adult or minor head of household as defined in paragraph (B) of this rule. A minor head of household who is subject to the learning, earning and parenting (LEAP) program shall be assessed pursuant to rule 5101:1-23-50 of the Administrative Code.

(2) The appraisal may include an evaluation of the employment, educational, physiological, and psychological abilities or liabilities, or both, of the work eligible individual, adult or minor head of household.

(3) Each appraisal shall include screening for domestic violence, as set forth in rule 5101:1-3-20 of the Administrative Code.

(4) At the appraisal, the county agency shall develop with the adult, minor head of household and work eligible individual a plan for the assistance group to achieve the goal of self sufficiency and personal responsibility through unsubsidized employment within the time limit for participating in OWF established by section 5107.18 of the Revised Code.

(5) The plan set forth in paragraph (C)(4) of this rule developed for work eligible individuals shall include assignments to one or more work activities or alternative activities. The county agency shall include the plan in the self

sufficiency contract as set forth in rule 5101:1-3-11 of the Administrative Code.

- (6) The county agency shall conduct more appraisals at times that the county agency determines.
 - (7) If the adult, minor head of household or work eligible individual claims to have a medically determinable physiological or psychological impairment, illness, or disability, the county agency may require that the adult, minor head of household or work eligible individual undergo an independent medical or psychological examination at a time and place reasonably convenient to the work eligible individual.
 - (8) A county agency, at times it determines, may conduct assessments of work eligible individuals and assistance groups participating in OWF to determine whether any work eligible individual or members of the assistance group are in need of other assistance or services provided by the county agency or other private or government entities. Assessments may include the following:
 - (a) Whether any member of the assistance group or work eligible individual has a substance abuse problem;
 - (b) Whether there are any other circumstances that may limit an assistance group member's or work eligible individual's employability.
 - (9) At the first assessment conducted by the county agency , it shall inquire as to whether any member of an assistance group or work eligible individual is the victim of domestic violence, including child abuse. The county agency shall provide this information to the Ohio department of job and family services (ODJFS) who will maintain the information for statistical analysis purposes.
 - (10) The county agency may refer an assistance group member or work eligible individual to a private or government entity that provides assistance or services the county agency determines the member or work eligible individual needs. The entity may be a public children services agency (PCSA), chapter of alcoholics anonymous, narcotics anonymous, or cocaine anonymous, or any other entity the county agency considers appropriate.
- (D) ~~Hours of participation for a work eligible individual~~ What are the required hours of work participation?
- (1) All work eligible individuals shall be assigned to one or more work activities or

alternative activities, except as provided in paragraphs (D)(4) and (D)(5) of this rule.

- (2) After a work eligible individual is assigned to a work activity or alternative activity a county agency shall place the work eligible individual in the assigned activity as soon as the activity becomes available.
- (3) A work eligible individual placed in one or more work activities shall participate in the activities at least the following number of hours as determined by the county agency:
 - (a) In an assistance group that includes only one work eligible individual, at least an average weekly amount of thirty hours.
 - (b) In an assistance group that includes two work eligible individuals and receiving no federally funded child care, at least an average total weekly amount of thirty-five hours for the two work eligible individuals.
 - (c) In an assistance group that includes two work eligible individuals and is receiving federally funded child care, at least an average total weekly amount of fifty-five hours for the two work eligible individuals.
 - (d) In an assistance group that includes two work eligible individuals where one parent is disabled at least an average total weekly amount of thirty hours.
 - (e) In an assistance group that includes a work eligible individual who is the only parent or specified relative in need in the family of a child under six years of age, at least an average weekly amount of twenty hours.
 - (f) In an assistance group that includes a minor child under twelve months of age and a single custodial parent a county agency may exempt the work eligible individual for no more than twelve months. The county agency may assign the exempt work eligible individual to one or more alternative activities for a number of hours a week the county agency determines.
 - (g) A recipient who is married or a head of household and has not attained twenty years of age is deemed to be engaged in work for a month in a fiscal year if the recipient:

- (i) Maintains satisfactory attendance at secondary school or the equivalent during the month; or
 - (ii) Participates in education directly related to employment for an average of at least twenty hours per week during the month.
- (4) There are circumstances under which the county agency may reduce a work eligible individual's hours of participation in a work activity as defined in paragraph (F) of rule 5101:1-3-01 of the Administrative Code to less than the weekly hours otherwise required. The county agency shall document the reason for not assigning the participant to all or some of the required hours. The appraisal or assessment shall be used to determine if it is appropriate to assign a reduced number of hours.
- (5) One work eligible parent may complete all required work activity hours for a two-parent assistance group. In order to meet the federal work participation rate at least one of the parents in a two-parent assistance group must participate sufficient hours to meet the all-family rate as set forth in paragraph (F) of rule 5101:1-3-01 of the Administrative Code.
- (6) Alternative activities
 - (a) If a county agency determines that a work eligible individual has a temporary or permanent barrier to participation in a work activity, it may assign a work eligible individual to one or more alternative activities pursuant to rule 5101:1-3-12.12 of the Administrative Code.
 - (b) There are no minimum number of hours required for assignment in alternative activities.
 - (c) There are no limitations as to the number of work eligible individuals who may be assigned to alternative activities.
- (7) A county agency may reassign a work eligible individual when the county agency determines reassignment will aid the assistance group in achieving self sufficiency and personal responsibility and shall make reassignments when circumstances requiring reassignment occur, including when a temporary barrier to participating in a work activity is eliminated.
- (8) Job search and job readiness activities, as defined in rule 5101:1-3-12.5 of the Administrative Code, are the only activities to which an applicant of OWF

can be assigned.

- (9) Participation in a work activity may be waived due to domestic violence, as set forth in rule 5101:1-3-20 of the Administrative Code.

(E) ~~Holidays~~ Which holidays may be counted towards work participation?

- (1) Holidays are limited to the ten federal holidays as established by the United States government in 5 U.S.C. 6103(a) (01/05).

- (a) New Years day, January first;
- (b) Birthday of Martin Luther King Jr., the third Monday in January;
- (c) Washington's birthday, the third Monday in February;
- (d) Memorial day, the last Monday in May;
- (e) Independence day, July fourth;
- (f) Labor day, the first Monday in September;
- (g) Columbus day, the second Monday in October;
- (h) Veteran's day, November eleventh;
- (i) Thanksgiving day, the fourth Thursday in November; and
- (j) Christmas day, December twenty-fifth.

- (2) In order to count a holiday as actual hours of participation, the individual must have been scheduled to participate on that day but for the holiday.

(F) ~~Good cause~~ What is considered good cause for missed hours of work participation?

- (1) Missed hours of participation in a month may be made up by a work eligible individual within the same month at the discretion of the county agency. Any missed hours of participation that are not made up by an individual may be considered good cause if they meet one of the good cause reasons set forth in rule 5101:1-3-11 of the Administrative Code.

- (2) For each failure, refusal or absence, the county agency shall determine if good cause exists.
- (3) Verification of good cause may be requested of the work eligible individual. The county agency shall apply a reasonableness standard when requesting verification for both the situation for which verification has been requested and for the time frame to provide the verification to the county agency.
- (4) In determining if good cause for nonparticipation with a work requirement exists, the county agency shall determine that child care is a necessary support service when a single custodial parent caring for a minor child under age six proves a demonstrated inability, as determined by the county agency, to obtain child care for one or more of the following reasons:
 - (a) Unavailability of appropriate child care within a reasonable distance from the parent's home or work site;
 - (b) Unavailability or unsuitability of informal child care by a relative or under other arrangements;
 - (c) Unavailability of appropriate and affordable formal child care arrangements.
- (5) To determine if a single custodial parent meets a provision in paragraph (F)(4) of this rule, the following definitions shall be applied:
 - (a) "Appropriate child care" means the availability of a licensed or certified child care provider.
 - (b) "Reasonable distance" is defined by each individual county agency and is based on availability of transportation.
 - (c) "Unsuitability of informal child care" is a decision made by the county agency , and is based on information it receives from the PCSA that the PCSA determines is relevant to share with the county agency in order to protect children pursuant to rule 5101:2-34-38 of the Administrative Code. Rule 5101:2-34-38 of the Administrative Code sets forth the policy regarding the sharing of information between the PCSA and the county agency related to child abuse and neglect.
 - (d) "Affordable child care arrangements" means that all OWF participants are

guaranteed eligibility for child care subsidy with copayments based on family size and income.

(6) The county agency shall inform single custodial parents caring for a child under age six years of age of the following requirements, and may include this information on the participant's self sufficiency contract.

- (a) The provisions in paragraph (F)(4) of this rule;
- (b) The exception to imposing a three-tier sanction if the single custodial parent demonstrates an inability to obtain needed child care;
- (c) The county agency procedures for determining a single custodial parent's inability to obtain needed child care;
- (d) The fact that the exception to participation in work activities does not extend the OWF time limits; and
- (e) The right to a state hearing.

Documentation to confirm that parents have been informed of this provision shall be contained in the case file.

(7) If the county agency determines that the provisions of paragraph (F)(4) of this rule do not apply, the county agency shall apply the sanction policy pursuant to rule 5101:1-3-15 of the Administrative Code unless the assistance group has other good cause for noncompliance.

(8) Any missed hours of participation for which good cause cannot be established are subject to the three _tier sanction provisions as set forth in rule 5101:1-3-15 of the Administrative Code.

(G) ~~Supervision~~ What are the supervision requirements for unpaid work activities?

- (1) Participation in unpaid activities shall be supervised no less frequently than once each day in which the individual is scheduled to participate.
- (2) Daily supervision means that a responsible party has daily responsibility for oversight of the individual's participation, not necessarily daily, in-person contact with the participant.

(3) Work eligible individuals shall be supervised by one of the following:

- (a) The employer;
- (b) The work supervisor; or
- (c) Other responsible third party.

(H) ~~Verification of~~ How are hours of participation in unpaid activities verified?

- (1) All actual hours of participation shall be verified on a monthly basis.
- (2) Verification is considered to be met when the county agency has received confirmation of the actual hours of participation.
- (3) All assigned hours of participation shall be accounted for by the county agency .
- (4) Verified hours of participation shall be entered into the client registry information system-enhanced (CRIS-E) in a timely manner.
- (5) Acceptable types of verification for hours participated include but are not limited to the following:
 - (a) The CRIS-E generated schedule;
 - (b) JFS 06910 "Record of Attendance Report" (rev. 09/06);
 - (c) JFS 06909 "Record of School Attendance Report" (rev. 09/06);
 - (d) Data exchange report;
 - (e) Documented phone contact with work site; and
 - (f) Other county agency acceptable methods so long as the elements listed are included:
 - (i) The participant's name;

- (ii) An accounting of all assigned hours of participation at that participation site;
- (iii) The name and location of the participation site;
- (iv) The name of the participant's work site supervisor; and
- (v) The name and phone number of the person verifying the hours.

(I) ~~Verification of~~ How are hours of participation in paid activities verified?

- (1) A county agency shall verify the participation hours for unsubsidized employment, subsidized employment program (SEP) and on-the-job training (OJT) at least once every six months. All wage information reported on the interim report pursuant to rule 5101:1-2-20 of the Administrative Code shall be reported at least once every six months.
- (2) The hours reported on the interim report and verified pursuant to rule 5101:1-2-20 of the Administrative Code shall be used as a six month projection of hours of participation.
- (3) The hours verified during the application and reapplication process as set forth in rules 5101:1-2-01 and 5101:1-2-10 of the Administrative Code shall be used as a six month projection of hours of participation.
- (4) The county agency shall determine monthly work participation hours by multiplying the average weekly number of hours by 4.3.

(J) ~~Fair Labor Standards Act (05/00) (FLSA)~~ How are the work assignments affected by the Fair Labor Standards Act (05/00) (FLSA)?

- (1) Work eligible individuals assigned to the work experience program (WEP) and community service activities are subject to FLSA requirements contained in 29 U.S.C. 201 (05/00).
- (2) "To employ" is defined for purposes of complying with FLSA as "to suffer or permit to work."
- (3) Work experience program and community service activities should be examined by the county agency to determine whether each assigned activity is subject

to FLSA.

- (4) The maximum monthly hours of participation allowable under FLSA are determined as follows:
 - (a) The OWF grant (before recoupment) and food assistance allotment (before recoupment) are added together;
 - (b) Child support collections received in the month and retained to reimburse the state or federal government for the current month's OWF payment are subtracted from the total in paragraph (J)(4)(a) of this rule.
 - (c) The net amount in paragraph (J)(4)(b) of this rule is divided by the higher of the state or federal minimum wage to determine the maximum allowable hours of monthly participation in work experience program or community service.
- (5) If the child support received is fluctuating or not representative of the current child support payments, the county agency shall convert the child support payments to a monthly average using the process defined in paragraph (F)(3)(c)(i) of rule 5101:1-23-20 of the Administrative Code. The county agency shall use child support payments collected and retained in the immediately preceding three month period to determine an average amount to be used in the calculation of maximum monthly hours of participation allowable under FLSA.
- (6) Any work allowance amount is excluded from the calculation of monthly FLSA hours of participation.
- (7) If a work assignment is subject to the requirements of the FLSA and the allowable assignment for hours of participation falls below the core hour requirement as set forth in paragraph (F)(1) of rule 5101:1-3-01 of the Administrative Code one of the following must occur, except as provided in paragraph (D)(4) of this rule:
 - (a) The work eligible individual can make up the remainder of the core hours in a core activity not subject to FLSA; or
 - (b) The county agency can deem the remainder of the core hours to have been met.
- (8) If core hours are deemed for a work eligible individual, as allowed in paragraph

(J)(7)(b) of this rule, any remaining hours pursuant to paragraph (F)(1) of rule 5101:1-3-01 of the Administrative Code can only be completed in a non-core activity.

(K) ~~Other requirements~~ What other requirements pertain to OWF work activities?

- (1) No work eligible individual shall be assigned to a work activity or alternative activity when the employer removes or discharges a person, for the purpose of substituting the individual in the person's place in any of the following circumstances:
 - (a) The person is already employed as a regular full-time or part-time employee of the employer;
 - (b) The person has been employed full time or part time as a work eligible individual in a work activity or alternative activity;
 - (c) The person is or has been involved in a dispute between a labor organization and the employer; or
 - (d) The person is on layoff from the same or any substantially equivalent job.
- (2) No employer shall hire an OWF recipient or work eligible individual part-time to circumvent hiring a full-time employee.
- (3) The county agency shall establish and maintain a grievance procedure for resolving complaints by individuals or their representatives that the assignment of a work eligible individual violates the provisions set forth in paragraph (K)(1) of this rule.
- (4) Except for a work eligible individual who is assigned to subsidized employment as set forth in rule 5101:1-3-12.2 of the Administrative Code or unsubsidized employment as set forth in rule 5101:1-3-12.1 of the Administrative Code, credit for work performed by a work eligible individual in a work activity or alternative activity does not constitute remuneration for the purpose of Chapter 124., 144., or 145. of the Revised Code and services performed by the work eligible individual do not constitute employment for the purposes of Chapter 4141. of the Revised Code.
- (5) The county agency shall implement and enforce the requirements of this rule. State and local agencies shall cooperate with the county agency to the maximum extent possible in the implementation of these sections.

- (6) In employing persons to administer and supervise work activities and alternative activities, a county agency shall give first consideration to applicants for OWF and work eligible individuals provided such applicants and work eligible individuals qualify for the administrative and supervisory positions to be filled. An applicant or work eligible individual shall be eligible for first consideration only within the county in which the applicant applies for OWF or a work eligible individual participates in OWF.
- (7) To the maximum extent practicable, necessary support services provided under section 5107.66 of the Revised Code shall be performed by work eligible individuals first placed in a work activity or alternative activity.

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CERTIFIED ELECTRONICALLY

Certification

01/26/2012

Date

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