

**GENERAL INFORMATION SYSTEM**  
**DIVISION: Employment and Transitional Supports**

September 14, 2005

Page: 1

**TO:** Commissioners, Employment Coordinators, TA Directors, FS Directors, WMS  
Coordinators, BICS Coordinators

**FROM:** Russell Sykes, Deputy Commissioner, Division of Employment & Transitional  
Supports

**SUBJECT:** Non-Compliance With Employment Requirements

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** John James at (518) 473-3123 or by e-mail at  
[JohnH.James@otda.state.ny.us](mailto:JohnH.James@otda.state.ny.us)

The purpose of this notice is to advise districts that as a result of decisions issued by the New York State Appellate Divisions (Earl v. Turner, Dost v. Wing), districts are required to determine that a recipient of temporary assistance willfully and without good cause failed or refused to comply with employment requirements before imposing an employment pro-rata sanction.

Required Action

Districts must revise their conciliation and sanction procedures so that, in most cases, a sanction is only imposed for noncompliance with employment requirements when the refusal or failure to comply was both willful and without good cause. The determination of when such conduct is willful and without good cause may include, but is not necessarily limited to, identifying a pattern of the recipient's failure to take reasonable steps to address issues within the recipient's control that may prevent the recipient from complying with employment requirements. Such a determination must be made on a case-by-case basis, and the steps that the recipient took to address issues within the recipient's control which prevented him or her from complying with the employment requirement need to be explored in each instance of non-compliance.

As an example of the case-by-case analysis required, a recipient who appeared at the worksite after the scheduled time because of a transportation delay would generally not be considered to have willfully failed to comply in the first instance of tardiness, but should be advised of the reasonable steps that should be taken to get to the assignment on time. The recipient might be counseled to, for example, take an earlier bus or train or arrange for an alternate means of transportation to arrive at the worksite at the appointed time. Subsequent instances of tardiness or non-compliance would need to be evaluated to determine whether or not the recipient's non-compliance rose to the level of being willful and without good cause. On the other hand, a recipient who fails to report to an employment assignment and does not respond to the conciliation notice within the required time frame or otherwise provide documentation to establish good cause may be considered to have willfully and without good cause failed to comply with the assignment in the first instance.

The information used to make the determination of whether a recipient's failure to comply is willful and without good cause must be documented in the recipient's record. The willful standard does not apply for failure to comply with applicant assessment and applicant job search

**GENERAL INFORMATION SYSTEM**  
**DIVISION: Employment and Transitional Supports**

September 14, 2005

Page: 2

requirements which results in case denial. In addition, the willful standard does not apply in instances of non-compliance with food stamp work requirements, but districts still need to consider whether the food stamp work registrant had good cause for not complying with the food stamp work assignment.

The Office is revising the applicable employment-related notices to include the willful standard (the Conciliation Notice (LDSS-4230), the Notice of Intent to Change Public Assistance Grant and/or Food Stamp Benefits for Non-Compliance with Employment Related Requirements (Timely and Adequate and Notice of Effect on Medicaid Benefits (LDSS-4004), and the language on the Client Notices System and the Welfare-To-Work Caseload Management System). The WTWCMS generated conciliation notice has been revised and migrated for district use as of September 12, 2005.

Districts that are using local equivalent forms in lieu of the State forms noted above will need to revise the local form to be consistent with the language on the respective State form and submit the revised form to your WTW Technical Advisor for approval.

A separate policy directive will be released to provide additional guidance and further case examples on this matter.