



May 11, 2023

**Cash Assistance Manual Transmittal Letter No. 190**

**TO:** All Cash Assistance Manual Holders  
**FROM:** Matt Damschroder, Director  
**SUBJECT:** **Five Year Rule Review: Ohio Works First: Work Activities.**

In accordance with section 106.03 of the Ohio Revised Code (ORC), each state agency is required to review each of its rules in the Ohio Administrative Code a minimum of once every five years. The intent of the review is to ensure that Administrative Code rules are clearly written and that program requirements are accurate, up-to-date and clearly expressed. To the extent possible, unnecessary paperwork will be eliminated, local agencies will be given increased flexibility, and any adverse impact on businesses will be eliminated or reduced. As a result of the review, the agency may amend the rule; rescind the rule; or continue the rule without amendment.

The rule has been subject to a review by the Joint Committee on Agency Rule Review (JCARR). The rule will become effective on 06/01/2023.

**Chapter 2000**

**5101:1-3-12 " Ohio Works First: Work Activities."**

This rule describes the Ohio works first activities program. OFA has amended this rule. The following changes have been made to the rule:

- The title to paragraph (A) was updated to “Which section of the Revised Code applies to work activities?”;
- Paragraph (A)(1) was removed and replaced with “Section 5107.05 of the Revised Code authorizes the director of job and family services to adopt rules necessary to comply with Title IV-A, Title IV-D, federal regulations, state law and the state plan.”;
- The last sentence in paragraph (A)(2) was removed as the language in this paragraph already states that the county will follow the requirements in this rule;
- The paragraph level cross-references to other Administrative codes were removed;
- The title to paragraph (E) has been updated to read “What ten holidays may be counted towards work participation?”;

- Paragraph (E)(1) was amended to say “Pursuant to 45 C.F.R. 261.60 (2/2008) the following ten holidays are limited to:”;
- References throughout this rule to the statewide automated eligibility system were updated to the Ohio benefits integrated eligibility system;
- The revision dates to forms were removed; and
- Minor language changes were also made to improve clarity.

5101:1-3-12

**Ohio works first: work activities.**

(A) Which section of the Revised Code applies to work activities?~~Conflict with the Revised Code~~

(1) Section 5107.05 of the Revised Code authorizes the director of job and family services to adopt rules necessary to comply with Title IV-A, Title IV-D, federal regulations, state law and the state plan~~Section (5) of Amended Substitute Senate Bill 238 of the 126th General Assembly (9/2006) 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) (8/1996). If necessary to bring the state into compliance with 42 U.S.C. 607(i)(2) (8/1996), 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 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, 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.~~

(B) 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, when 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) 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, and participate at least the following number of hours except as provided in paragraphs (C)(2) to (C)(4) of this rule:
    - (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 as described in ~~paragraph (C)(2) of~~ rule 5101:1-3-01 of the Administrative Code, 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) When a county agency determines that an assignment to a work activity is not appropriate for an assistance group that includes a single custodial parent with a minor child under twelve months of age:–
      - (i) A failure to meet the work participation rate by the work eligible individual is disregarded from the federal work participation rate

for no more than twelve months in the work eligible individual's lifetime; and

- (ii) The county agency may assign the work eligible individual to one or more alternative activities for a number of hours a week determined by the county agency.
- (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 when 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.
- (2) There are circumstances when the county agency may reduce a work eligible individual's hours of participation in a work activity 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 when it is appropriate to assign a reduced number of hours.
  - (a) In accordance with rule 5101:9-2-02 of the Administrative Code, a reduction in the hours of participation may be a reasonable modification for an individual that discloses, has, or appears to have a physical or mental condition that substantially limits one or more major life activities.
  - (b) When an individual discloses, has, or appears to have a physical or mental condition that substantially limits one or more major life activities, the county agency shall act in accordance with rule 5101:9-2-02 of the Administrative Code and the Americans with Disabilities Act (ADA) plan adopted by the county agency in accordance with rule 5101:9-2-02 of the Administrative Code.
- (3) 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. Until the activity is available, a county agency shall assign a work eligible individual to another activity as appropriate.
- (4) Participation in a work activity may be waived due to domestic violence, as described in rule 5101:1-3-20 of the Administrative Code.

(5) One work eligible parent may complete all required work activity hours for a two-parent assistance group.

(6) Alternative activities

(a) When 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.

(D) Can a work eligible individual applicant(s) be assigned to a work activity?

Job search and job readiness activities, as defined in rule 5101:1-3-12.5 of the Administrative Code, are the only activities an applicant(s) of OWF can be assigned.

(E) What ten holidays may be counted towards work participation?

(1) Pursuant to 45 C.F.R. 261.60 (2/2008) the following ten holidays are limited to: ~~Holidays are limited to the ten federal holidays as established by the United States government in 5 U.S.C. 6103(a) (10/1998).~~

(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 work eligible individual shall have been scheduled to participate on that day but for the holiday.

(F) What occurs when a work eligible individual fails to complete the assigned hours?

(1) Single custodial parent with a child under six:

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

- (a) The provisions in rule 5101:1-3-13 of the Administrative Code;
- (b) The exception to imposing a three-tier sanction when 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.

(2) All others with missed hours:

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 when they meet one of the good cause reasons described in rule 5101:1-3-13 of the Administrative Code. Any missed hours of participation that are not made up within the month or that good cause cannot

be established are subject to the three-tier sanction provisions as described in rule 5101:1-3-15 of the Administrative Code.

- (3) When the county agency determines that the provisions of rule 5101:1-3-13 of the Administrative Code do not apply, the county agency shall apply the sanction policy pursuant to rule 5101:1-3-15 of the Administrative Code.

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

- (1) Participation in unpaid activities shall be supervised no less frequently than once each day that 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) 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 Ohio benefits integrated statewide automated eligibility system in a timely manner.
- (5) Acceptable types of verification for hours participated include but are not limited to the following:
  - (a) The Ohio benefits integrated ~~statewide automated~~ eligibility system generated schedule;
  - (b) JFS 06910 "Record of Attendance Report" (~~rev. 9/2006~~);
  - (c) JFS 06909 "Record of School Attendance " (~~rev. 9/2006~~);



- (d) Data exchange report;
- (e) Documented phone contact with the work site or other methods determined acceptable by the county agency as long as the following 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) 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.
- (2) When hours have been reported on an interim report issued and verified pursuant to rule 5101:4-7-01 of the Administrative Code, the verified hours shall be used as a six month projection of hours of participation.
- (3) The hours verified during the application and reapplication process as described 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 4.33.

(J) How are the work assignments affected by the Fair Labor Standards Act (5/2011) (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 (5/2007).
- (2) "To employ" is defined for purposes of complying with FLSA as "to suffer or permit to work."
- (3) WEP 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 WEP or community service.
  - (5) When 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 (E)~~ 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 issued is excluded from the calculation of monthly FLSA hours of participation.
  - (7) When 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 described in ~~paragraph (F)(1)~~ of rule 5101:1-3-01 of the Administrative Code one of the following shall occur, except as provided in paragraph (C)(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) When core hours are deemed for a work eligible individual, as allowed in paragraph (J)(7)(b) of this rule, any remaining hours assigned can only be completed in a non-core activity.
- (K) 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 described in paragraph (K) (1) of this rule.
- (4) Except for a work eligible individual who is assigned to subsidized employment as described in rule 5101:1-3-12.2 of the Administrative Code or unsubsidized employment as described 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 that the applicant applies for OWF or a work eligible individual participates in OWF.

- (7) Subject to the availability of funds and except as limited by section 5107.58 of the Revised Code, a county agency shall provide support services it determines to be necessary for OWF participants placed in a work activity, developmental activity, or alternative work activity. A county agency may provide support services it determines to be necessary for OWF applicants placed in a job search or job readiness activity established under section 5107.50 of the Revised Code. Support services may include publicly funded child care under Chapter 5104. of the Revised Code, transportation, and other services.
- (8) The assignment of a work eligible individual pursuant to this rule or its supplemental rules shall be consistent with rule 5101:9-2-02 of the Administrative Code and the ADA plan adopted by the county agency.

Effective: 6/1/2023  
Five Year Review (FYR) Dates: 2/6/2023 and 06/01/2028

CERTIFIED ELECTRONICALLY

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Certification

05/10/2023

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Date

Promulgated Under: 119.03  
Statutory Authority: 5107.16, 5107.05  
Rule Amplifies: 5107.05, 5107.66  
Prior Effective Dates: 03/01/1983, 06/07/1984 (Emer.), 09/01/1984,  
08/01/1985, 03/01/1987, 12/01/1987 (Emer.),  
02/15/1988, 01/01/1989, 06/30/1989 (Emer.),  
09/23/1989, 04/02/1990, 04/01/1991, 07/01/1991,  
05/01/1992, 09/01/1993, 12/01/1995 (Emer.),  
02/19/1996, 07/01/1996 (Emer.), 10/01/1997,  
12/20/1997, 10/01/1999, 01/01/2001, 10/01/2004,  
07/01/2005, 09/29/2006 (Emer.), 12/29/2006,  
07/01/2007, 10/01/2007 (Emer.), 12/29/2007,  
10/01/2008, 05/01/2010, 02/05/2012, 05/07/2012,  
10/01/2014, 03/01/2018, 09/01/2018