

**11.6 Refusal to Participate..... 1**

**11.6.1 Refusal to Participate ..... 2**

**11.6.1.1 Demonstrating a Refusal to Participate..... 2**

**11.6.2 Prior to Closing a Case for Refusal to Participate..... 5**

**11.6.2.1 Determining the Date of Refusal to Participate..... 5**

**11.6.2.2 Rectifying Refusal to Participate Prior to Case Closure..... 5**

**11.6.3 Penalty for Refusal to Participate..... 6**

**11.6.3.1 Two-Parent Households ..... 7**

## **11.6 Refusal to Participate**

The refusal to participate policy applies to any W-2 employment position (TEMP, CSJ, or W-2 T). The policy does not apply to the CMC or ARP placements or any of the case management placements.

The intent of the refusal to participate policy is to require standards of behavior by participants in the W-2 program that are substantially similar to those expected of employees by employers in the general economy so that W-2 participants will become prepared for unsubsidized employment in the general economy through their participation in employment positions in the W-2 program.

It is not the intent of the refusal to participate policy to close cases when participants are unable to find or maintain unsubsidized employment because they are in need of supportive services to overcome barriers to unsubsidized employment.

### **11.6.1 Refusal to Participate**

W-2 participants are required to participate in all assigned activities in their W-2 Employability Plan. W-2 participants are also required to cooperate with specific W-2 program requirements. When a participant does not comply with assigned activities or does not cooperate with specific program requirements, W-2 nonparticipation and noncooperation policies require the FEP to:

- Work with participants to identify issues related to their missed activities, such as barriers and other circumstances that contribute to missing activities;
- Identify any needed accommodations or modifications that will allow them to participate; and
- Provide services and supports required for them to participate in appropriately assigned activities and to develop the skills they need to manage issues that arise so they do not continue to miss activities without good cause. (See [11.3.1](#) and [11.4.2](#))

The refusal to participate policy does not replace nonparticipation and noncooperation policies (see [11.1](#) and [11.4](#)); however, the FEP must follow the same policies and procedures for initiating action to uncover barriers and take steps to address the barriers that may have caused the refusal to participate. (See [11.6.2.2](#))

If the FEP determines that a participant in a TEMP, CSJ, or W-2 T placement refuses to participate without good cause, the individual is ineligible to participate in the W-2 program for three months. Three months means 90 calendar days.

If the FEP determines that a second parent in the participant's W-2 Group is subject to the work requirement under the two-parent policy (see [14.3](#)) and refuses to participate without good cause, the W-2 Group is ineligible to participate in the W-2 program for 90 calendar days.

#### **11.6.1.1 Demonstrating a Refusal to Participate**

The FEP must close a case when a TEMP, CSJ, or W-2 T participant demonstrates a refusal to participate in the W-2 program without good cause. The FEP must also close a case when a second parent in the participant's W-2 Group is required to participate in assigned activities

because the family is receiving federally funded childcare and refuses to participate without good cause.

A participant is refusing to participate when the individual:

**1. Is terminated from employment for misconduct or engages in misconduct on the premises of an employer.**

'Misconduct' means an act by the individual that shows an intentional and substantial disregard of the employer's interests or of the individual's job duties and obligations. It does not mean an act of an isolated instance of carelessness and ordinary negligence or good faith errors in judgment.

'Misconduct' includes:

- A violation by an individual of an employer's reasonable written policies concerning the use of alcohol or controlled substances.
- Theft of an employer's property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an individual's employment with an employer, or intentional or negligent conduct by an individual that causes substantial damage to an employer's property.
- Conviction of an individual of a crime that was committed on or off duty, if the individual is unable to perform the duties that the individual performs for an employer due to the conviction.
- One or more threats or acts of harassment, assault, or other physical violence by an individual at an employment site.
- Use of profane or abusive language directed towards staff or others at an employment site.

**2. Fails to appear or appears more than 15 minutes after the scheduled start time of an interview with a prospective employer, a job fair, or a meeting with a prospective employer that was arranged by the W-2 agency.**

Failure to appear or appearing more than 15 minutes late does not include instances where there was a mistake, inadvertence, misunderstanding on the part of the individual, or other good cause.

**3. Leaves an interview or a meeting with a prospective employer prior to the conclusion of the interview or meeting.**

**4. Appears for an interview with a prospective employer wearing inappropriate attire or exhibiting inappropriate grooming after receiving written or oral directions or training on appropriate attire and grooming.**

'Attire' means clothing and excludes jewelry and accessories. Examples of inappropriate attire include clothing with profane language, offensive references to a specific gender, ethnic, racial or religious group, vulgar messages, and references to alcohol and controlled substances.

'Grooming' means unclean, unkempt, or inappropriate dress or grooming which adversely affects proper performance of duties or the image of the employer.

**5. Fails to complete a job application required by a prospective employer.**

A job application is "complete" when an individual submits the job application required by the prospective employer using the method specified by that employer.

Failing to complete a job application does not include instances where there was a mistake, inadvertence, or misunderstanding on the part of the individual.

**6. Communicates to a prospective employer an unreasonable requirement for salary, hours of employment, or working conditions that disqualifies the individual from employment with that employer.**

**7. Provides incorrect or incomplete information regarding employment qualifications in an interview or job application that disqualifies the individual from employment with the prospective employer after receiving written or oral directions or training from the W-2 agency regarding interviewing and filling out employment applications.**

Examples of employment qualifications include criminal convictions, work history, educational attainment, credentials and certificates, driving record or possession of a valid driver's license, and salary history and expectations.

Providing incorrect or incomplete information regarding employment qualifications does not include instances where there was a mistake, inadvertence, or misunderstanding on the part of the individual.

**8. Quits appropriate employment or refuses a bona fide offer of appropriate employment.**

"Appropriate" means consistent with an individual's employability plan.

**9. Fails to participate in assigned activities and W-2 payments are reduced by 20% or more for two consecutive participation periods, or for three non-consecutive participation periods in a rolling 6-month period.**

**10. Refuses or fails to follow a verbal or written direction from W-2 agency staff or staff at an employment site.**

Refusing or failing to follow a verbal or written direction does not include instances where there was a mistake, inadvertence, or misunderstanding on the part of the individual.

**11. Uses vulgar or profane language or engages in abusive behavior directed towards staff or others in the W-2 agency or employment site.**

**12. Violates written work rules developed by the employer, if the work rules were provided to the individual and there is a signed acknowledgement of receipt of the work rules in the individual's case record.**

Examples of work rules are dress codes, attendance policies, health and safety standards, use of company property, and appropriate workplace behaviors.

A violation of written work rules does not include instances where there was a mistake, inadvertence, or misunderstanding on the part of the individual.

### **11.6.2 Prior to Closing a Case for Refusal to Participate**

W-2 policy requires FEPs to conduct ongoing informal assessments, which includes the need to discuss with the participant any underlying causes of refusal to participate and services and activities necessary for the participant to fully engage in W-2 activities. (See [Chapter 5](#))

Prior to closing a case for refusal to participate, the FEP must explore potential barriers that may be interfering with a participant's ability to participate in W-2 and take steps to address those barriers. (See [11.4.2.1](#))

#### **11.6.2.1 Determining the Date of Refusal to Participate**

The date of refusal to participate is the date that the participant demonstrated the refusal to participate.

**Example 1:** The W-2 agency arranges an interview for a participant with an employer on March 18, 2018, and the participant was a no-call, no-show to the interview. On March 22, 2018, the FEP learns that the participant did not show for the interview. The date of refusal to participate is March 18, 2018.

**Example 2:** A participant fails to participate in assigned activities and the May 2018 and June 2018 W-2 payments are reduced by 20% or more for two consecutive months. At W-2 pulldown, CARES issues CARES letter NWSN to the participant with a good cause due date of June 6, 2018. The participant does not submit good cause by June 6, 2018. The date of refusal to participate is June 6, 2018, the final date that any good cause can be received for 20% or more payment reduction.

#### **11.6.2.2 Rectifying Refusal to Participate Prior to Case Closure**

In addition to exploring potential barriers, if a participant's case is going to close for refusal to participate, the W-2 agency must:

1. Provide written notice to the W-2 participant of the proposed case closure and the reason for the case closure; and
2. Allow the participant 7 working days to rectify the deficiency, failure, or other behavior to avoid the proposed case closure. To rectify means that the participant is given one last opportunity to present good cause for refusing to participate.

The FEP must create a record of the refusal to participate occurrence in CWW, including the individual who is refusing to participate, the date of occurrence for refusal to participate, and the reason(s) for refusal to participate. The W-2 Notice of Refusal to Participate (W2RP) letter will be generated via a nightly batch process and mailed to the participant. The W2RP letter is intended to give the participant one last opportunity to present good cause for refusing to participate.

The W2RP letter informs the participant to contact the worker as soon as he or she receives it to explain why the refusal to participate occurred. The participant is given 7 working days to provide good cause. The due date for submitting good cause for refusing to participate cannot be extended from 7 working days to 30 days. The seventh working day is the final date any good cause can be received.

If the participant provides a valid good cause reason by the good cause due date, the FEP must delete the refusal to participate record in CWW so that W-2 eligibility is not impacted.

If the participant does not provide good cause by the due date, or the FEP determines that good cause does not exist, the FEP must run eligibility to generate the case closure. CARES will issue the appropriate Notice of Eligibility after eligibility is run.

(See Operations Memo 18-13 for instructions on entering a W-2 Refusal to Participate record in CWW)

### 11.6.3 Penalty for Refusal to Participate

The penalty for refusing to participate in W-2 is ineligibility to participate in W-2 for three months. Three months means 90 calendar days. The period of ineligibility begins the calendar day after the 7-working day timeframe to rectify a refusal to participate.

**Example:** The last day of the 7-working day timeframe for a participant to rectify a refusal to participate is November 16, 2018 (a working day). The period of ineligibility begins on November 17, 2018, (the following calendar day) and ends on February 13, 2019 (the 90th calendar day). The participant may reapply for W-2 and be eligible for W-2 services beginning on February 14, 2019.

After the 90-day penalty period, the individual may reapply for W-2 services. Eligibility for W-2 is not automatically reinstated. For applicants applying after the conclusion of a penalty period, the W-2 agency must not apply the nonfinancial eligibility requirement that the applicant made a good faith effort to obtain employment and not refused any bona fide offer of employment within 180 calendar days immediately preceding application (see [2.2.1](#), #8). The W-2 agency also must not apply the nonfinancial eligibility requirement that the applicant cooperated with the W-2 agency's assistance with finding employment if the current application is within 180 calendar days of a previous application (see [2.2.1](#), #9).

The W-2 agency may impose subsequent refusal to participate penalties after the individual has completed the 90-day penalty period, re-enrolled in the W-2 program, and then refused to participate again. There is no limit to the number of penalties that a participant may receive for refusing to participate in W-2.

### **11.6.3.1 Two-Parent Households**

In a two-parent household, the second parent in the W-2 Group who is required to participate in W-2 activities because the family is receiving federally funded childcare may be ineligible to participate in W-2 if he or she refuses to participate.

Both the parent in a W-2 employment position (TEMP, CSJ, and W-2 T) and the second parent in a two-parent household may each be ineligible to participate in W-2. Therefore, refusal to participate penalties imposed on each parent must be tracked independently of each other. When either parent refuses to participate, both parents in the W-2 Group are ineligible to participate in W-2. If the parent who is under penalty moves out of the two-parent household and leaves the W-2 Group, the other parent may be eligible to reapply for W-2 services as a single-parent household.

**Example:** Sharon is a CSJ participant. Her spouse John works part-time at the mall. In addition, John is assigned to four hours per week of employment search so he can find full-time work. The two-parent household is receiving federally funded childcare for their two children. John was terminated from employment for stealing from the employer. The FEP reviews the case and determines that John is refusing to participate. Therefore, both John and Sharon are not eligible to participate in W-2 for 90 days. If John were to move out of the two-parent household and leave the W-2 Group, Sharon may reapply and be found eligible for W-2. However, John remains ineligible for W-2 regardless of leaving the W-2 Group because John refused to participate. If John moves into a new two-parent household and enters a new W-2 Group with an adult in a W-2 employment position, the new W-2 Group would be ineligible to participate in W-2 for the remainder of John's 90-day penalty period.