

Date: June 13, 2013

To: Ohio AmeriCorps State and National Program Directors and Staff

From: ServeOhio

Re: Ohio Unemployment Compensation Law

Recently ServeOhio staff met with officials at the Ohio Department of Jobs and Family Services (ODJFS) regarding the issue of unemployment compensation for AmeriCorps members and the possibility of developing legislation to exempt AmeriCorps service as is done in other states. During the meeting ODJFS advised us that implementation of new legislation is not necessary; their present interpretation of Section 4141.01(B)(3)(aa) of the Ohio Revised Code and Rule 4141-5-05 of the Ohio Administrative Code excludes AmeriCorps participants from receiving unemployment compensation benefits based on their AmeriCorps service. At our request, ODJFS has now provided a new determination letter to this effect, replacing the prior determination letter issued in 1994. A copy of the new letter is attached.

Moving forward you need to take the following actions to prevent and defend against unemployment claims filed by AmeriCorps members.

1. **Do NOT report AmeriCorps stipends to ODJFS.** AmeriCorps members and stipend amounts should not be included on quarterly unemployment tax reports (JFS Form 20126 "Wage Detail.") When an unemployment claim is filed ODJFS reviews the claimant's earnings as reported by all employers to determine the level of benefits to which they are entitled, and from which employers. If no AmeriCorps earnings are reported there will be no income on which to establish a claim against your organization. You will need to involve your human resources and/or fiscal office (and any external payroll processing agent) in implementing this change in reporting.
2. **Educate your members that their AmeriCorps service is exempted from unemployment.**

- (a) At the start of the program year include the following language in your Member Service Agreement benefits section:

The Member understands that she/he is not eligible for Unemployment Compensation based on service in AmeriCorps. The Ohio Department of Jobs and Family Services has determined that section 4141.01 (B) (3) (aa) of the Ohio Revised Code and Rule 4141-5-05 of the Ohio Administrative Code excludes AmeriCorps members from coverage under the Ohio Unemployment Compensation Law. This determination does not limit the member's right to unemployment benefits to which they may be entitled on the basis of any outside employment that is concurrent with their AmeriCorps service.

You may wish to have the member initial this specific clause in addition to signing the entire document. Also be sure to cover this issue during member orientation.

- (b) At the end of the program year include a reminder in your member exit letters or other communications that AmeriCorps service does not qualify a member for unemployment compensation.

3. **Respond promptly and consistently to any future claim.** In the event that ODJFS notifies your organization that an AmeriCorps participant has filed a claim for unemployment benefits based on their AmeriCorps service use the following “defense packet” in your response:
- (a) A cover letter explaining that the claimant was not an employee but rather a participant in your AmeriCorps program. Therefore their service meets the exclusion outlined in Section 4141.01 (B)(3)(aa) of the Ohio Revised Code and Rule 4141-5-05 of the Ohio Administrative Code that precludes AmeriCorps participants from receiving unemployment compensation.
 - (b) A copy of the ODJFS letter to ServeOhio, dated May 24, 2013, documenting the exclusion of the AmeriCorps program from Ohio’s unemployment compensation law.
 - (c) A copy of the member’s signed and dated Member Service Agreement, which includes the aforementioned (2)(a) language.

ODJFS did acknowledge some inconsistency in implementation of the AmeriCorps exclusion in the past and will issue a reminder to its agents. If there are any pending claims against your agency you may wish to go back and correct past quarterly tax filings with ODJFS to eliminate reported AmeriCorps stipends. In this case you should contact Monica Guice, Contribution Section of the ODJFS Office of Unemployment Compensation, via email at Monica.Guice@jfs.ohio.gov or by phone at (614) 644-5377. She has been alerted to the issue and will be able to provide assistance.

Finally, please be aware that this determination applies strictly to unemployment compensation. It does not apply to other issues such as workers compensation, childcare benefits, or food stamps.

We are pleased that a positive solution has finally been achieved to a long-standing issue impacting our AmeriCorps programs in Ohio. We will host you and your organization’s appropriate staff on a conference call on **Tuesday, June 18, 2013, 1:00PM**, to discuss this further and answer any questions you may have, including how best to implement the change within 2013-14 program budgets that have already been submitted.