



## Louisiana Migrant Education Program ID&R Team



### Frequently Asked Questions 07/29/19

#### **Question: Is qualifying work in a nursery considered seasonal or temporary under the Title I, Part C Migrant Education Program qualifying criteria?**

Answer: This can be a tricky one...Let's start with the definitions of both seasonal and temporary employment from the MEP Non-Regulatory Guidance (NRG).

##### **G1. What is seasonal employment?**

According to 34 C.F.R. § 200.81(o) of the regulations, seasonal employment is employment that occurs only during a certain period of the year because of the cycles of nature and that, by its nature, may not be continuous or carried on throughout the year.

##### **G5. What is temporary employment?**

According to 34 C.F.R. § 200.81(p), temporary employment means “employment that lasts for a limited period of time, usually a few months, but no longer than 12 months.”

Question G3 of the NRG is also relevant for this question.

##### **G3. How long may seasonal employment last?**

The definition of seasonal employment in 34 C.F.R. § 200.81(o) states that it is employment that occurs only during a certain period of the year and may not be continuous or carried on throughout the year. Therefore, like temporary employment, seasonal employment may not last longer than 12 months.

According to the NRG, both seasonal and temporary employment “must not last longer than 12 months.” Therefore, whenever determining eligibility, we must conclude that the worker's employment will not last or has not lasted longer than 12 months.

Now, back to the question...Is qualifying work in a nursery considered seasonal or temporary? It depends. As a general rule of thumb, nursery work will be considered temporary work. Since the recruiter needs to determine that the employment lasts less than 12 months regardless if it is seasonal or temporary, they should gather a statement from the worker indicating the temporary status of the worker's employment. This will make sure the LMEP is documenting the necessary information.

There may be instances, though, when a plant is only grown during a certain time of the year because of the cycles of nature. If this is the case and the recruiter determines the qualifying work to be seasonal, a comment must be included to explain the recruiter's decision. This comment must be of sufficient basis to explain the recruiter's rationale for determining that the qualifying work is seasonal.

Please see below for more examples about this question.



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For example, many nurseries hire their workers to do many different jobs that may not be dependent on the cycles of nature. For these instances, refer to G7 of the NRG. The recruiter needs to determine that the worker is employed on a temporary basis and will not be employed by the nursery for more than 12 months.

**G7. Is a worker who was hired to perform a series of different jobs, which together lead to the worker being employed by the same employer for more than 12 months, employed on a temporary or seasonal basis?**

No. Workers who are hired to work for more than 12 months by the same employer, regardless of how many different jobs they perform, are not “engaged in new temporary or seasonal employment” as provided in the definitions of migratory agricultural worker and migratory fisher in section 1309(2) and (4) of the ESEA. See also 34 C.F.R. § 200.81(o) and (p).

For another example, many nurseries grow different plants at different times of the year to correspond with the different holidays seasons. For example, they might grow poinsettias for the Christmas season, roses for Valentine’s day, different flowers for Easter and Mother’s Day, for instance. If the worker is employed during one of these times, the work is not considered seasonal because it is not dependent on the cycles of nature. See question G12 of the guidance.

**G12. Should jobs that occur only at certain times of the year because of a holiday or event be considered as temporary employment or seasonal employment?**

Jobs that occur only at certain times of the year because of a holiday or event (*e.g.*, Thanksgiving, Christmas, etc.) should be considered temporary employment because the time of year that the work is performed is not dependent on the cycles of nature, but rather the holiday or event.