

MERCED COUNTY WORKFORCE DEVELOPMENT BOARD

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POLICY BULLETIN

MCWDB PB # 04-25	Date Released: June 26, 2025
To:	All Merced County Workforce Development Board Staff and Service Providers
From:	Erick Serrato, Director, Merced County Workforce Development Board
Effective Date:	June 26, 2025
Subject:	Dislocated Worker Eligibility & Unlikely to Return to a Previous Industry or Occupation
Responsible Official:	MCWDB Program Manager

PURPOSE

This policy defines and establishes the Dislocated Worker Eligibility and Unlikely to Return to a Previous Industry or Occupation criteria for determining eligibility for the Workforce Innovation and Opportunity Act (WIOA) Dislocated Worker (DW) program.

BACKGROUND

WIOA Section 3(15)(A)(iii) defines the term DW and identifies the DW categories individuals may qualify for WIOA services. Unlikely to return to a previous industry or occupation is an eligibility requirement for Dislocated Worker Category 1 and Category 2. WIOA regulations allow the local Workforce Development Boards to define the criteria for establishing unlikely to return to a previous industry or occupation.

For the purposes of WIOA Dislocated Worker program eligibility, the previous industry or occupation relates directly to the job of dislocation, not the most recent job if it is considered stop-gap employment.

DEFINITIONS

General Economic Conditions: Those that have a direct adverse effect on a self-employed individual(s) and are beyond one's control. Examples include but are not limited to self-employment, which has little demand or has been declining in the local area, seasonal factors, unforeseen or unusual operating costs, and depressed market conditions.

Stop-Gap Employment: Temporary work an individual accepts only because they have been laid off from day-to-day work for which their training, experience, or work history qualifies them. Typically, stop-gap employment will pay substantially below the salary of the individual's primary occupation and/or if they are working substantially under the skill level of their customary occupation. At times, stop-gap employment provides a self-sufficient wage, such as a job obtained through a temporary employment agency. Still such employment would not change the individual's DW status. The stop-gap determination must be made on a case-by-case basis. It must take into consideration an individual's personal, family, financial, and employment situation. Individuals engaged in stopgap employment are reported as employed.

Substantial Layoff: Any event that results in the temporary or permanent reduction in workforce of twenty (20) or more employees, either by department or total company, but not necessarily resulting in permanent closure.

Sufficient Attachment to the Workforce: A period of 90 cumulative full or part-time workdays within the last two (2) years prior to the WIOA application/registration date. For this definition, a workday can include as little as 2 hours of work. Part-time employment conditions that, by their design, restrict the number of hours available for work in any day are acceptable in determining sufficient attachment. Examples include but are not limited to school aides, babysitters, and domestic workers.

Unlikely to Return to a Previous Industry or Occupation: Status of an applicant who has limited opportunities for employment in their occupation of dislocation. The definition does not need to be based solely on economic conditions and job availability. This could be defined in terms of family, personal, or financial circumstances that may affect the likelihood of an individual returning to their previous industry or occupation for employment. These are to be determined on a case-by-case basis.

CRITERIA FOR DISLOCATED WORKER ELIGIBILITY

Category 1: Individual or Small Group Layoff	Individual was terminated or laid off or has received a notice of termination or layoff (from employer of less than 25 employees) and is eligible for or have exhausted entitlements for Unemployment Compensation (UC), and is unlikely to return to previous industry or occupation.
Category 2: Sufficient Attachment to the Workforce	Individual was terminated or laid off, or has received a notice of termination or layoff, and has been employed for sufficient duration to demonstrate workforce attachment, but is not eligible for UC due to insufficient earnings, or the employer is not covered under the state UC law, and is unlikely to return to previous industry or occupation.
Category 3: Substantial Layoff	Individual was terminated or laid off or has received notice of termination or layoff from employment as a result of or substantial layoff at a plant, facility, or enterprise (20+ workers).
Category 4: General Announcement of Closure	Individual is employed at a facility at which the employer has made a general announcement that the facility will close within 180 days. OR Individual received a General Announcement of Closure (without a date given, or closure date is more than 180 days in the future).
Category 5: Self-Employed	Individual was self-employed and is now unemployed due to: <input type="checkbox"/> General economic conditions in the community OR <input type="checkbox"/> Natural disaster.
Category 6: Displaced Homemaker	Individual has been providing unpaid services to family members in the home and has been dependent on the income of another family member but is no longer supported by that income. OR Individual is a dependent spouse of a member of the armed forces on active duty and whose family income is significantly reduced because of a deployment, or a call or order to active duty, or a permanent change of station, or the service connected death or disability of the member, and is unemployed and is experiencing difficulty in obtaining or upgrading employment. AND Is experiencing difficulty in obtaining or upgrading employment.
Category 7: Military Spouse 1	Individual is the spouse of a member of the Armed Forces on active duty, and has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member.
Category 8: Military Spouse 2	Individual is the spouse of a member of the Armed Forces on active duty and who is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.
Category 12: Dislocated Worker Grant (DWG):	Individual does not meet criteria outlined for Dislocated Workers in 1-8 above, but as an individual that meets DWG eligibility outlined under WIOA Title ID National programs, Sec. 170 National Dislocated Worker grants, relating to SEC 170(b)(1)(A) workers affected by major economic dislocations OR Sec 170(b)(1)(B) workers affected by an emergency or disaster.

Note: An individual who is registered as a DW remains a DW until he/she is formally exited from the program, regardless of employment status or earnings.

CRITERIA FOR "UNLIKELY TO RETURN"

The Merced County Workforce Development Board (MCWDB) has determined a DW is Unlikely to Return to a Previous Industry or Occupation if at least one of the following criteria is met. Written documentation is needed to prove the Unlikely to Return criteria. Self-Attestation (per MCWDB Policy #07-21) is allowable if all efforts have failed to acquire the written documentation.

- Worked in a declining industry or occupation, or not in local demand, as documented on State lists or locally developed lists of such industries/occupations. State lists are available from the local Employment Development Department's (EDD) Labor Market Information Division, and local lists must be developed by an appropriate entity, such as the Chamber of Commerce, the local board, economic development agency, a qualified consultant/educational entity, or other valid public use quality source of labor market information.
- Has had a lack of job offers as documented by local EDD Workforce Services or Unemployment Insurance staff, rejection letters from employers in the area, or other documentation of unsuccessful efforts to obtain employment in the prior industry or occupation.
- Worked in an industry/occupation job for which there are limited job orders in the EDD CalJOBS system at the time of eligibility determination, as certified by EDD or America's Job Center of California (AJCC) staff with access to the CalJOBS database.
- Physical or other problems which would preclude reentry into the former industry or occupation. An individual may have started in an industry performing physically or mentally demanding jobs but is no longer capable of performing the essential requirement of the job.
- Identified by EDD's Worker Profiling and Reemployment system, which identifies people who are not likely to gain employment prior to exhausting their Unemployment Insurance (UI) benefits. This can be proven by a letter, screenprint, or CalJOBS for EDD's Initial Assistance Workshop (IAW), Personalized Job Search Assistance (PJSA) session, or Reemployment Services and Eligibility Assessment (RESEA).
- The individual would be required to re-locate to an area where the previous occupation is in demand.
- Natural disaster, including pandemics, equal to or greater than 60 days, and the negative economic conditions and sudden economic impact on industries or occupations experienced by the nation that results in lost wages.
- Loss of agricultural land and/or mechanization.
- A review of the individual's skills are obsolete compared to the skills that are now required.
- A college degree, or Industry Recognized Credential, was not required when an individual started in their previous occupation but is under the current labor market.
- Has a poor employment history indicating a reduced capacity or ability to be reemployed in the former industry or occupation. Documentation to verify poor employment history may include, but is not limited to, proof that:
 - Employment has been limited to one or more part-time (20 hours per week or less) or short-term (four months or less) jobs within the prior year, which were for the income maintenance rather than a career path (i.e., employment in "dead-end" jobs, which would not prepare the individual for permanent reemployment in the previous industry or occupation); or
 - UI benefits and/or public assistance receipt in the prior year, with little or no employment in interim periods, indicating a poor work history; or
 - Terminated or laid-off due to mechanization, which is defined as "to do or operate by machinery, not by hand"; or,
 - The former industry or occupation has depressed local labor market conditions due to one or more of the following:
 - Changing seasonal employment patterns; or,
 - Effects of extreme or unusual weather patterns.
- Determination by staff that an individual's likelihood of returning to his/her previous industry or occupation is unlikely due to circumstances that cause significant barriers to employment. Barriers to employment are defined in the California Unemployment Code – UIC § 14005.
- Has exhausted UI benefits and has been unable to find a job in their previous industry or occupation.
- Has been unemployed 12 weeks within the last 20 months and has been unable to find a job in their former industry or occupation.
- Has been actively seeking but unable to find employment in their previous industry or occupation for a period

of 60 days or more.

- Does not have a specific recall date from the employer of the qualifying dislocation.
- Has a change in a family situation that requires higher income.
- Has a gap in employment that decreases the chance of returning to the same occupation level or type of job.
- Has limited employment opportunities in the occupation or industry within the local area.

Additional Criteria for "Unlikely to Return"

Farmworkers, Ranchers, and Fishermen:

Applicants that may have worked seasonally can be considered "unlikely to return" to work in a previous industry or occupation for a variety of reasons:

- Change in family situation requiring a higher income.
- Disability that precludes returning to the same occupation.
- Natural disaster that results in lost wages.
- Loss of agricultural land.
- Mechanization.
- Any significant variance to normal seasonal employment patterns resulting in uncertain return-to-work dates.

Additionally, permanent closures or substantial layoffs from agricultural enterprises or facilities such as packaging or canneries are not excluded from the standard under WIOA. The WIOA Section 3(15)(C) standard regarding those that were self-employed includes employment as farmers, ranchers, or fishermen and are unemployed due to economic conditions that resulted from general economic conditions in the community in which the applicant resides or because of natural disasters. These conditions may include extreme or unusual weather patterns and agricultural and fishing market downturns.

Furloughs, Temporary Layoffs, and Lockouts

Layoff - The permanent or temporary termination of employment of an employee due to a position being abolished, insufficient funds, lack of work, or any other reason not reflecting discredit on the employee (such as dismissal for inadequate performance, violation of workplace rules, cause, etc.).

Furlough - The placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons [Title 5 U.S. Code 7511(a)(5)]. As such, it is a temporary termination of employment or layoff. Individuals that are furloughed are laid off. Depending on the local definition of "unlikely to return", the circumstances of the applicant, and local economic conditions, furloughed individuals may or may not be likely to return to their previous industry or occupation. Local Workforce Investment Areas are in the best position to make this determination. If these individuals are likely to return to their previous industry or occupation and need more than core services, they may be served as adults. In some cases, a business, company or corporation's furloughs are in fact substantial layoffs and the "unlikely to return" provision does not apply. Local boards have the discretion to define substantial layoff since the definition depends on local economic conditions.

Lockout - Any refusal by an employer to permit any group of five or more employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of employment of such employees (California Labor Code Section 1132.8). A lockout does not terminate the employer-employee relationship, so locked out employees are not eligible dislocated workers since they have not been terminated or laid off. They are not eligible for unemployment compensation and are likely to return to the same industry or occupation once the dispute is resolved. The same guidance applies to employees that are on strike. There may be locked out employees who for financial reasons seek other employment. These individuals may be served as adults.

Recently Separated Service Members

Recently separating service members who are within 48 months of discharge (other than dishonorable) or release from active military, naval, or air service automatically meet the dislocated worker requirement that the individual is unlikely to return to his or her previous industry or occupation.

Military Spouses

A military spouse may be documented as "unlikely to return" if the spouse was required to leave employment due to a result of a military member's transfer and certain circumstances prevent the spouse to return immediately to his/her previous industry or occupation for the following reasons:

- The spouse resumes employment with the same employer in a new location and may not be the same structurally or organizationally as in the prior location;
- The spouse's job in their new location starts at a lower level of seniority than their position at their previous location;
- A gap in employment may lessen their likelihood of returning to the same level of occupation or job;
- The spouse's skills may be obsolete or inadequate to meet the advancing competency needs of the current workforce and economy.
- The industry in which the spouse has prior work experience, in the region to which the spouse has relocated, may be declining; or,
- An excess number of workers with similar skill sets and experience may be seeking limited employment opportunities in the region.

REFERENCES

- WIOA Section 3(15)
- 20 CFR § 680.130
- 20 CFR § 680.630
- EDD State Directive WSD 24-04
- TEGL 19-16, TEGL 23-19
- California Unemployment Code – UIC § 14005
- California EDD CalJOBS Dislocated Worker Categories