

MERCED COUNTY WORKFORCE DEVELOPMENT BOARD

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POLICY BULLETIN

MCWDB PB # 01-22	Date Released: March 23, 2022
To:	All Merced County Workforce Development Board Staff and Service Providers
From:	Erick Serrato, Director, Merced County Workforce Development Board
Effective Date:	March 23, 2022
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 program.

BACKGROUND

WIOA Section 3(15)(A)(iii) defines the term dislocated worker and identifies the dislocated worker 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. The 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. There may be times when stopgap 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 dislocated worker status. The stop-gap determination must be made on a case-by-case basis and 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 the purpose of this definition, a workday can include as little as 2 hours of work. Part-time employment conditions that, by their nature or 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

<p>Category 1: Individual or Small Group Layoff</p>	<p>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.</p>
<p>Category 2: Sufficient Attachment to the Workforce</p>	<p>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.</p>
<p>Category 3: Substantial Layoff</p>	<p>Individual was terminated or laid 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).</p>
<p>Category 4: General Announcement of Closure</p>	<p>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).</p>
<p>Category 5: Self-Employed</p>	<p>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.</p>
<p>Category 6: Displaced Homemaker</p>	<p>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.</p>
<p>Category 7: Military Spouse 1</p>	<p>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.</p>
<p>Category 8: Military Spouse 2</p>	<p>Individual are 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.</p>
<p>Category 12: Dislocated Worker Grant (DWG):</p>	<p>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.</p>

CRITERIA FOR "UNLIKELY TO RETURN"

The Merced County Workforce Development Board (MCWDB) has determined a Dislocated Worker 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, with Self-Attestation (per MCWDB Policy #07-21) 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.
- Does not have the education and/or the necessary skills or can no longer meet the minimum requirements for reentry into the former industry or occupation, as documented through the assessment of the customer's educational achievement levels, testing, or other suitable means.
- 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.

Dislocated Worker Eligibility and Unlikely to Return to a Previous Industry or Occupation

Page 4 of 4

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

Additional Criteria for "Unlikely to Return"

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()(A)(iii)
- California EDD State Directive WDS 14-04
- 20 CFR § 680.130
- California Unemployment Code – UIC § 14005
- California EDD CalJOBS Dislocated Worker Categories