

WORKFORCE INVESTMENT BOARD OF TULARE COUNTY WORKFORCE INNOVATION AND OPPORTUNITY ACT TITLE I	DATE: March 16, 2022
	SUBJECT: Dislocated Worker Unlikely to Return Eligibility

WIB POLICY MEMO

TUL PM 22-01

TO: WIB Subrecipients
WIB Staff

SUBJECT: Dislocated Worker Unlikely to Return Eligibility

EXECUTIVE SUMMARY

This policy memo provides revised guidance and procedures for determining the eligibility of Dislocated Workers under the Unlikely to Return criterion.

This policy memo contains no state-imposed requirements.

Effective March 15, 2022, all WIB Subrecipients must follow the Dislocated Worker Unlikely to Return eligibility guidelines outlined in this policy memo. This policy memo replaces and supersedes previous guidance from the WIB:

- Dislocated Worker Eligibility for all Unlikely to Return criterion sections in the WIB WIA Title I Eligibility Technical Assistance Guide (TAG)
- WIB Memo dated July 23, 2020 - Service Delivery for Remote Services & WIOA Title I Guidance: Dislocated Worker – Unlikely to Return Determination section only

DURATION:

This Policy Memo is in effect until the WIB WIOA Title I Eligibility Technical Assistance Guide (TAG) is revised.

REFERENCES:

- Workforce Innovation & Opportunity Act (WIOA) (Public Law 113 – 128) Section 3(15)(A)(iii)
- Title 20 Code of Federal Regulations WIOA Final Rule Part 680.660, 680.130
- USDOL ETA WIOA Training and Employment Guidance Letter 19-16 Guidance on Services provided through the Adult and Dislocated Worker Programs under the WIOA
- WIB Directive TUL 14-06 WIA Title IB Eligibility Technical Assistance Guide
- WIB Service Delivery for Remote Services and WIOA Title I Guidance Memo issued July 23, 2020

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 the Dislocated Worker Unlikely to Return category. The WIOA regulations allow the local workforce development boards to define the criteria for establishing unlikely to return to a previous industry or occupation.

POLICY AND PROCEDURES

Dislocated Worker Unlikely to Return Eligibility Criteria

Individuals that have been terminated or laid off, or has received a notice of termination or layoff, from employment or a separating military service member that has received a notice of separation, a DD-214 from the Department of Defense, or other documentation showing a separation or imminent separation from the Armed Forces, **and is eligible for or has exhausted entitlement to unemployment compensation, OR**

Individuals that have been terminated or laid off, or has received a notice of termination or layoff from employment, **and has been employed for a duration sufficient to demonstrate attachment to the workforce but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law, AND**

Is unlikely to return to a previous industry or occupation. "Unlikely to Return" - May 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. The definition does not need to be based solely on economic conditions and job availability.

WIB allows the use of any of the following considerations in determining "unlikely to return" to a previous industry or occupation when written documentation is available to prove that the individual is unlikely to return:

- Has had a lack of job offers as documented by the local Job Service (JS) Unemployment Insurance (UI) office, rejection letters from employers in the area, or other documentation of unsuccessful efforts to obtain employment in the prior industry or occupation;
- Worked in a declining industry or occupation, as documented on a State locally developed list of such industries or occupations. **(A lack of job orders in CalJOBS does not sufficiently document declining industries or occupations.)**
- Is insufficiently educated and/or does not have the necessary skills for re-entry into the former industry or occupation, as documented through the assessment of the individual's educational achievement levels, testing, or other suitable means; or
- Has physical or other problems which would preclude re-entry into the former industry or occupation, as documented by a physician/other applicable professional (e.g., psychiatrist, psychiatric social worker, chiropractor);

- Has a poor employment history indicating a reduced capacity or ability to be re-employed 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 purpose of income maintenance rather than a career path (i.e., employment in “dead-end” jobs, which would not prepare the customer for permanent reemployment in the previous industry or occupation);
 - Unemployment insurance and/or public assistance receipt in the prior year, with little or no employment in interim periods, indicating a poor work history;
- Terminated or laid-off due to mechanization, defined as “to do or operate by machinery, not by hand;” or automation which is the creation and application of technologies to produce and deliver goods and services with minimal human intervention.
- Lost wages for equal to or greater than two weeks as a result of a natural disaster or public health emergency;
- Is part of an industry that is impacted by a public health emergency;
- 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.
- Farmworkers or individuals who worked seasonally can be considered unlikely to return to work in a previous industry or occupation for a variety of reasons such as:
 - Change in family situation that requires higher income;
 - Disability that precludes returning to the same occupation;
 - Natural disaster that results in lost wages; Loss of agricultural land;
 - Economic conditions that resulted from extreme or unusual weather patterns and agricultural market downturns;
 - Permanent closures or a substantial layoff from agricultural enterprises and facilities such as packaging, canneries, or farming;
 - Mechanization;
 - Any significant variance to normal seasonal employment patterns, resulting in uncertain return-to-work dates.
- An individual’s likelihood of returning to their previous industry or occupation is unlikely due to circumstances that cause significant barriers to employment. Barriers to employment include:
 - Offender
 - High school dropout
 - Homeless Individual
 - English language learner
 - Older Worker
 - Individual with a disability
 - Basic skills deficient
 - Long Term Unemployed – is a person who has been unemployed for 27 or more consecutive weeks.

Military spouse – A military spouse may be documented as “unlikely to return” if written documentation is available that the spouse was required to leave employment due to a military member’s transfer. These circumstances do not position the spouse to return immediately to their previous occupation or industry for the following reasons:

- If a military spouse resumes employment with the same employer, the employment is in a new location and may not be the same structurally or organizationally as in the prior location;
- When military spouses do get jobs in their new locations, they often start at lower levels of seniority than the levels of their positions in their prior locations;
- There is frequently a gap in employment, which may lessen their likelihood of returning to the same level of occupation or job;
- The skills of the military spouse may be obsolete or inadequate to meet the advancing competency needs of the current workforce and economy;
- The industry in which the military 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.

ACTION:

Please bring this policy memo to the attention of all WIB Subrecipients and WIB Staff.

INQUIRIES:

Please direct inquiries regarding this policy memo to the WIB at (559) 713-5200.



Adam Peck
Executive Director

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