

WORKFORCE INVESTMENT BOARD OF TULARE COUNTY WORKFORCE INNOVATION AND OPPORTUNITY ACT TITLE I	DATE: April 8, 2020
	SUBJECT: WORKER DISPLACEMENT PROHIBITION

WIB DIRECTIVE

TUL 20-02

APPROVED BY
WORKFORCE INVESTMENT BOARD
MINUTES OF 04-08-2020

TO: WIB Subrecipients
WIB Staff

SUBJECT: Worker Displacement Prohibition

EXECUTIVE SUMMARY

This policy provides the guidance and establishes the procedures regarding the prohibition on the replacing of regular employees with Workforce Innovation and Opportunity Act (WIOA) participants, and against infringing on the promotional opportunities of currently employed individuals. This policy applies to Workforce Investment Board of Tulare County (WIB) subrecipients of WIOA funds, and is effective immediately.

This policy contains no state-imposed requirements. WIB imposed policies are in *bold, italics*.

REFERENCES

- WIOA (Public Law 113-128) Sections 181(b)(2) and (3)
- Title 20 Code of Federal Regulations (CFR) Sections 680.830, 680.840, and 683.270
- Workforce Services Directive WSD18-05, Subject: WIOA Grievance and Complaint Resolution Procedures (September 4, 2018)
- WIB Directive TUL-19-01, Subject: Grievance and Complaint Resolution Procedures
- WIB Directive TUL-19-02, Subject: WIOA Title I Adult, Dislocated Worker, and Youth On-the-Job Training (OJT) Policy and Procedures
- WIB Directive TUL-18-03, Subject: Adult and Dislocated Worker Transitional Job Policy and Procedures

BACKGROUND

The WIOA Section 181(b)(2) states the general prohibitions against displacing current employees and against impairing existing contracts for services and collective bargaining agreements.

Additionally, WIOA Section 181(b)(3) states the prohibitions against replacing laid off employees with WIOA participants and against using WIOA participants to replace employees who have been terminated with the intent of so replacing them. Section 181(b)(3) of WIOA further prohibits infringement on the promotional opportunities of currently employed workers.

Further information and clarification regarding federal requirements for ensuring that WIOA participants do not displace other employees can be found in 20 CFR Section 683.270(a) through (c). Finally, 20 CFR Section 683.270(d) provides that regular employees and program participants alleging displacement may file a complaint under applicable WIOA grievance procedures.

POLICY AND PROCEDURES

Participants in programs and activities authorized under WIOA Title I may not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee, as of the date of participation (WIOA Section 181(b)(2)(A) and 20 CFR Section 683.270(a)). A WIOA participant may not be employed in, or assigned to, a job if any of the following is true. (WIOA Section 181(b)(3) and 20 CFR Section 683.270(c)):

- Any other individual is on layoff from the same or any substantially equivalent job.
- The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant.
- The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation.

Local Policy

The WIB has established systems to facilitate compliance with non-displacement prohibitions in WIOA and its associated regulations as outlined in WIB Directives TUL-19-02, WIOA Title I Adult, Dislocated Worker, and Youth On-the-Job Training (OJT) Policy and Procedures and TUL-18-03, Adult and Dislocated Worker Transitional Job Policy and Procedures.

Subrecipient staff must complete a Pre-Award Survey with the employer (WIB Form 18-14), in order to screen a perspective position prior to the development of a customized training agreement to ensure the following:

- *The agreement may not displace other employees, or impair existing contracts for services or existing collective bargaining agreements (§683.270).*
- *The customized training funds may not be provided to employers to directly or indirectly assist, promote, or deter union organizing (§680.830).*

- *The customized training funds may not be used to directly or indirectly aid in the filling of a job opening, which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in labor dispute involving work stoppage (§680.840).*

WIOA Section 181(b)(2)(B) and 20 CFR Section 683.270(b) prohibit the impairment of existing contracts for services or collective bargaining agreements. When a program or activity authorized under WIOA Title I would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

Finally, 20 CFR Section 683.270(d) states that regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found in WIOA Section 181(c) and 20 CFR Section 683.600. *The WIB has the responsibility to establish and maintain procedures for participants and other interested parties to file grievances and complaints alleging violations of WIOA Title I requirements as outlined in WIB Directive TUL-19-01, Grievance and Complaint Resolution Procedures. Subrecipients also have the responsibility to ensure they are complying in the above described policy.*

ACTION:

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

INQUIRIES:

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



Adam Peck
Executive Director

AP:JP:llg

Attachments:

[Summary of Comments](#)

SUMMARY OF COMMENTS

Draft Directive *Worker Displacement Prohibition (WSDD-194)*

There was 1 comment to the draft version of this Directive:

Comment #1 – On page 2 of the directive, the statement, “a WIOA participant shall not be employed in a job if they meet any of the following criteria” could cause confusion with its use of the word “they” given that as written, the “they” refers to a WIOA participant. Can this statement be modified to clear up any potential confusion?

Resolution – The Directive has been updated to more consistently reflect the language found in Title 20 *Code of Federal Regulations* Section 683.270(c).