

## Rivers East Workforce Development Board

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RIVERS EAST LA ISSUANCE 2021-02

**SUBJECT:** TITLE 1 DISLOCATED WORKER PROGRAM ELIGIBILITY

**PURPOSE:** This issuance provides guidance on eligibility for Dislocated Worker participation in the WIOA program.

**ACTION:** The DWS Operational Guidance Number OG-09-2021 attached should be used by WIOA Career Advisors in determining eligibility for the Dislocated Worker Program. The applicable eligibility category must be selected in NCWorks Online and corresponding eligibility documents scanned.

**EFFECTIVE DATE:** July 1, 2021

  
Jennie Bowen  
Workforce Development Director

Attachments

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**NORTH CAROLINA DEPARTMENT OF COMMERCE  
DIVISION OF WORKFORCE SOLUTIONS**

**DWS Operational Guidance Number: OG 09-2021**

**Date: April 22, 2021**

**Subject: Guidance on Eligibility for Participation in the  
Workforce Innovation and Opportunity Act (WIOA)  
Title I Dislocated Worker Program**

**From:**

  
Chet Mottershead  
Acting Assistant Secretary for Workforce

**Purpose:** To provide guidance on eligibility for participation in the WIOA Title I Dislocated Worker Program and to rescind PS 14-2020.

**Background:** WIOA does not impose an age or income level standard or criterion on dislocated workers.

Customers must meet the following eligibility requirements in order to participate in the Dislocated Worker Program:

- A U.S. Citizen or otherwise legally entitled to work in the United States.
- Registered with Selective Service, if applicable (males born after January 1, 1960).
- Eligible for Training Services as defined in U.S. Department of Labor (USDOL) Training and Employment Guidance Letter (TEGL) 19-16.
- Meet the criteria of one of the following nine categories (WIOA definition Section 3(15)).

**A(i)(ii)(iii)**

An individual who has been terminated or laid off, or received notice of termination or layoff, from employment; AND is eligible for or has exhausted entitlement to unemployment compensation; and is unlikely to return to a previous industry or occupation.

**A(II)**

An individual who has been terminated or laid off, or received 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 previous industry or occupation.

Guidance for Section 3(15)(A)(i)(ii)(iii) and A(II):

- Includes returning military service members that were honorably discharged defined in TEGL 19-16.
- Includes permanent full-time and part-time employees as well as leased employees through a staffing agency that were separated through "no-fault" of his or her own.
- Does not include Independent Contractors on temporary assignment or seasonal workers.
- Previous industry is the specific industry which the employee was displaced from his or her job such as tobacco industry, apparel industry, or telecommunications industry.
- Previous occupation is the specific job the employee was displaced from such as cigarette maker, sock maker, or customer service representative.

**B(i)**

An individual who has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise.

Guidance for Section (B)(i):

- A number of Rapid Response services may be provided on-site such as employee information sessions, customized job seeking skills workshops, and partner presentations.
- The thrust is to serve employees in training prior to separation from employment as to protect the solvency of the Unemployment Insurance (UI) Trust Fund.
- Any notice filed in compliance to the Worker Adjustment and Retraining Notification (WARN) Act serves as a notice of termination.
- A notice of termination may also be a letter addressed to the employee and on company letterhead.
- Self-attestation is acceptable if the company immediately closes, and the employee is unable to get a letter of termination from his or her employer.
- Substantial layoff is defined as 20 or more employees.
- Laid off permanent full-time and part-time employees as well as leased employees through a staffing agency that will be separated through "no-fault" of his or her own.
- This does not include Independent Contractors on temporary assignment.



**B(ii)**

An individual is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or for purposes of eligibility to receive services other than training services, career services or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close.

Guidance for Section 3(B)(ii):

- A number of Rapid Response services may be provided on-site such as employee information sessions, customized job seeking skills workshops, and partner presentations.
- The thrust is to serve employees in training prior to separation from employment as to protect the solvency of the Unemployment Insurance (UI) Trust Fund.
- Employees may begin to receive WIOA Training Services 6-months, 26-weeks or 180 days prior to his or her separation date.
- Includes permanent full-time and part-time employees as well as leased employees through a staffing agency that will be separated through "no fault" of his or her own.
- This does not include Independent Contractors on temporary assignment.

**(C)**

An individual that was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

Guidance for Section 3(C):

- Includes Independent Contractors.
- Paying into the Unemployment Insurance Trust Fund is not a requirement for participation in Career or Training Services.

**(D)**

An individual who is a displaced homemaker. The term "displaced homemaker" means an individual who has been providing unpaid services to family members in the home and who has been dependent on the income of another family member but is no longer supported by that income; OR is the dependent spouse of a member of the Armed Forces on active duty and whose family income is significantly reduced because of deployment, a call or order to active duty, a permanent change of station or the service-connected death or disability of the member; AND is unemployed or underemployed and is expecting difficulty in obtaining or upgrading employment (WIOA Section 3(16)).

**E(i)**

An individual who is the spouse of a member of the Armed Forces on active duty, and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member.

**E(ii)**

An individual who is the spouse of a member of the Armed Forces on active duty and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

**F- Additional State Eligibility**

An individual who is long-term unemployed through no fault of his or her own.

**WIOA Section 170**

For an individual who does not meet criteria outlined for Dislocated Workers in categories 1 – 9 but is an individual that meets Dislocated Worker Grant (DWG) eligibility outlined under WIOA Title I National Programs, Section 170 National Dislocated Worker Grants, relating to Section 170(b)(1)(A) workers affected by major economic dislocations **or** Section 170(b)(1)(A) workers affected by an emergency or major disaster.

**Division Technical Assistance**

In some instances, determining whether an individual is a dislocated worker is based upon his or her eligibility (or lack thereof) for the State's Unemployment Insurance (UI) as stated in A(i)(ii)(iii) and A(II). A customer that has separated from employment through "no fault" of his or her own such as a company layoff, company closure, or lack of work; and is unlikely to return to a previous industry or occupation, qualifies as a WIOA Title I Dislocated Worker.

The following four scenarios may qualify an individual to be eligible as a WIOA Title I Dislocated Worker customer and receipt of Unemployment Insurance (UI) would suffice as documentation for the participant or the participant can attest to the reason:

- Fired/Terminated/Separated due to the inability to do the job.
- Quit due to medical reasons - the person can no longer perform his or her job.
- Quit due to an abusive spouse and is in a protective shelter program.
- Spouse who had to quit his or her job due to the other spouse being physically transferred/moved to another location and relocated in order to keep the family unit together.

Notice all of these reasons are based upon "no-fault" of the worker. The Case Manager will determine, "unlikely to return" status, which is whether or not the person can reasonably return to the same industry or the same occupation.

During the eligibility process the following should be considered:

- Part-time jobs or side jobs are not included in making the initial determination for Dislocated Worker eligibility.
- If someone is working a job that is not comparable to his or her last job, he or she can select "underemployed" rather than state "not employed".

**Action:** Case Managers should use one of these definitions when determining Dislocated Worker eligibility. For additional clarification, Case Managers may also reference the list of scenarios included on the Attachment.

**Effective Date:** Immediately

**Expiration:** Indefinite

**Contact:** DWS Accountability Programmatic Monitor

**Attachment:** Dislocated Workers Scenarios



## DIVISION DISLOCATED WORKER SCENARIOS

1. A worker receives official notification in compliance to the Worker Adjustment and Retraining Notification (WARN) Act due to a permanent layoff. The worker receives a *bona fide* job offer with another company. The worker accepts the job offer and leaves employment earlier than his or her established date of separation indicated in the WARN letter. The worker arrives to start his or her new job. He or she is informed by personnel that the department was not able to secure funding for the new position and that the job offer has been rescinded. Can this customer participate in the WIOA Title 1 Dislocated Worker Program?

Yes, under Section 3B(i) and regardless of whether the previous employer contests the claim for UI benefits. The customer has the official WARN letter and demonstrated due diligence by securing new employment prior to his or her established date of separation even though the new job did not materialize.

2. A worker physically injures himself or herself and is no longer able to perform his or her manual labor job. The company cannot reasonably accommodate the worker in another job, and the worker either voluntarily quits due to medical reasons or is discharged by the employer. Can this worker be served under the WIOA Dislocated Worker Program?

Yes, under Section 3(A)(i)(ii)(iii) and 3(B)(i) if the Local Area Case Manager determines there is a reasonable likelihood the customer will not return to a previous occupation. He or she probably cannot return to previous occupation due to his or her injury. Any termination due to medical reasons is a non-contested, non-charging claim for UI.

Alternatives: Vocational Rehabilitation Training may be a viable partner/resource for this customer. This customer can always be served under the WIOA Adult Program if the Local Area Case Manager cannot make that determination at the time of enrollment.

3. A prisoner was awarded work-release due to good behavior. Several months later, he or she met the term of his or her offense and has been released from prison. Can this customer be considered for WIOA services through the Dislocated Worker Program?

No.

Alternatives: This customer may be a good candidate for the WIOA Adult Program and/or qualify for other special offerings for ex-offenders.

4. If a customer was separated from employment due to "inability" to perform the job, can he or she participate in the WIOA Dislocated Worker Program?

Yes, under Section 3(A)(i)(ii)(iii) or 3(B)(i), if it is determined that the customer is unlikely to return to a previous occupation. Also, the inability to perform the job is a non-contested, non-charging UI claim.

5. Are college degreed professionals eligible to receive Training if laid off from his or her job?

Yes.

6. Is there an income threshold that determines whether a customer receives WIOA Dislocated Worker Training such as someone who made over \$100,000.00 per year in his or her last job?

No, the amount of pay does not preclude someone from participating in WIOA Dislocated Worker training. The Local Area Case Manager must determine appropriate eligibility factors and that enrollment and training would lead to reemployment.

7. A worker was laid off from his or her job in the Apparel Industry as a Sock Maker. There is another company in the Apparel Industry that is hiring for T-shirt Pressers. Can this person be served in the WIOA Dislocated Worker Training Program?

Yes, in this scenario, the customer has been dislocated from the Apparel Industry and has another opportunity for reemployment with a different company within the same Industry. This customer can be served in the Dislocated Worker Training Program under Section 3(A)(iii) if the Case Manager determines that he or she is unlikely to return to a previous occupation as a Sock Maker. In fact, it would be a great opportunity for on-the-job training for the customer to learn new skills as a T-shirt Presser.

8. A worker was laid off from his or her job in the Tobacco Industry as a Maintenance Mechanic. There are no similar industries within the local labor market. There is, however, a company hiring two Maintenance Mechanics in the Telecommunications Industry. Can this customer be considered for the Dislocated Worker Training Program?

Yes, since there is a reasonable unlikelihood for this customer to return to a previous Industry, he or she may participate in the Dislocated Worker Training Program under Section 3(A)(iii).

In fact, it may be an ideal opportunity for on-the-job training with the Telecommunications Industry that plans to hire two Maintenance Mechanics. The training contract may not be as lengthy since the customer has skills as a Maintenance Mechanic, but there is a learning curve since the industries are completely different; Tobacco Industry compared to Telecommunications Industry.

9. A company has recently announced a plan to permanently close in six months. We know that we can serve workers up to and including training within 180 days from their established date of separation. The concern is that the company employs a number of leased workers from various staffing agencies including Adecco, Kelly Services, and Aerotek. Can workers from these staffing agencies qualify for the Dislocated Worker Training Program?

Yes.



10. A very proactive company in our area plans to close a year from now. The company's attorney has filed official notification to all workers in compliance to the Worker Adjustment and Retraining Notification (WARN) Act. Do we still have to wait until 180 days prior to his or her separation date before we can enroll anyone in Dislocated Worker Training Services?

No, the 180-day limit is only for those companies that make a verbal, general announcement as it pertains to a mass layoff or closure. WARN requires a minimum written, 60-day notification. Since the attorney has filed written notices to each worker providing a year's notice, these customers may begin to receive WIOA services up to and including training. This includes both part-time and full-time workers as well as leased workers through a staffing agency, which can be served under Section 3(B)(i).

11. Are Independent Contractors considered self-employed regardless of whether the Contractor paid into his or her UI account?

Yes.

12. A large poultry plant plans to close in one of our rural counties by the end of the year. We have already begun providing on-site rapid response services to help transition its workforce. A couple of local farmers have contacted the Workforce Center to inquire about services. He or she indicated that he or she is having to dissolve his or her chicken hatchery business due to an increase in chicken feed prices and the closure of the poultry plant. Can these farmers be served in the Dislocated Worker Training Program?

Yes. Due to the high cost of chicken feed and closure of the poultry plant, these farmers are no longer able to sustain their business and may be served under Section 3(C).

13. A customer that has over 10 years' experience in the Entertainment Industry was recently laid off due to a Network's decision to cancel a Television series. He or she has worked as a Gripper but primarily performs electrical work for production sets. He or she is a member of the SAG-AFTRA Union, and his or her average pay is \$75.00 per hour. The average pay for Journeyman Electrician in this area is \$21.75. The customer does not have a Journeyman license. Should I suggest more training?

No. There is a reasonable likelihood that this customer will return to his previous industry.