

WORKER DISPLACEMENT PROHIBITION POLICY

EDD Revision Date: 11/22/02

WDB Review Date: 3/22/07; 12/17/15, 12/15/16

EXECUTIVE SUMMARY:

Purpose:

This document establishes the Workforce Development Board of Madera County's policy on prohibitions against replacing regular employees with Workforce Innovation and Opportunity Act (WIOA) participants, and against infringing on the employment, earning, and promotional opportunities of currently employed individuals.

Scope:

This policy applies to all recipients and subrecipients of WIOA funds through the Workforce Development Board of Madera County.

Effective Date:

This policy is effective on the date of approval by the Board.

REFERENCES:

- WIOA Section 181(b)(2) and (3)
- Title 20 of the Code of Federal Regulations (20 CFR), Section 683.270

STATE-IMPOSED REQUIREMENTS:

This policy contains no current State-imposed requirements.

FILING INSTRUCTIONS:

This policy implements the requirements of WIOA Section 181(b)(2) and (3) pending receipt of State guidance. Retain this policy until further notice.

BACKGROUND:

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

The WIOA Section 181(b)(3) contains 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. The WIOA Section 181(b)(3) further prohibits infringement on the promotional opportunities of currently employed workers.

Title 20 CFR Section 683.270(a) through (c) contains further information and clarification regarding federal requirements for ensuring that WIOA participants do not displace other employees. Section 683.270(d) provides that regular employees and participants alleging displacement may file a complaint under applicable WIOA grievance procedures outlined at 20 CFR 683.600.

POLICY AND PROCEDURES:

As required by WIOA Section 181(b)(2)(A) and Title 20 CFR Section 683.270(a), 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).

The WIOA Section 181(b)(2)(B) and Title 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.

As required by WIA Section 181(b)(3) and Title 20 CFR Section 683.270(c), a WIOA participant shall not be employed in or assigned to a job if:

- Any other individual is on layoff from the same or any substantially equivalent job; or
- The employer has terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created with the participants; or
- The job is created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals (as of the date of participation).

The WIOA and the federal regulations do not define the term “regular employee” as it pertains to the general WIOA non-displacement prohibitions. However, it is the clear intent of WIOA Section 181(b)(2)(A) that WIOA participants shall not displace or in any way reduce the hours of non-overtime work, wages, or benefits of any current employee, which could include part time, seasonal, and temporary employees whose contracted term of employment has not ended. Furthermore, WIOA Section 181(b)(3)(B) states that WIOA participants may not be employed with an employer if that employer has reduced the workforce with the intent of filling the vacancies with the WIOA participants.

The Workforce Development Board of Madera County defines seasonal employment as employment with a typical duration of six months or more out of a twelve-month period, **or** employment which is consistently and traditionally cyclical in nature (e.g., three months on, one month off), **or** employment which has documented periods of increased employment demand during certain peak periods of the year (e.g. summer months).

Title 20 CFR Section 683.270(d) states that regular employees and WIOA participants alleging displacement may file a complaint under the applicable grievance procedures found in WIOA Section 181(c) and Title 20 CFR Section 683.600.

ACTION:

The Workforce Development Board of Madera County requires that all recipients or subrecipients of WIOA Title I funds ensure that there is a system in place that facilitates compliance with the above described non-displacement prohibition in WIOA and its associated regulations.

INQUIRIES:

If you have questions, contact the Executive Director or designee at (559) 662-4500.