

ACTION BULLETIN

TO: All Adult, Dislocated Worker and Youth & Young Adult Career Service Providers (CSP) funded through the Workforce Innovation and Opportunity Act (WIOA)

DATE: August 15, 2019

SUBJECT: **Prohibition on the Replacing of Regular Employees with Workforce Innovation and Opportunity Act (WIOA) Participants**

PURPOSE OF BULLETIN:

The purpose of this bulletin is to provide notification to Alameda County Workforce Development Board's (ACWDB) contracted WIOA Adult, Dislocated Worker and Youth CSPs regarding updates to EDD's policy concerning the displacement (including partial displacement) of regular employees for the purpose of placing WIOA participants into employment.

REFERENCES:

- Workforce Services Directive (WSD) 19-02 – Worker Displacement Prohibition; Issued July 11, 2019
- WIOA Section 181(b)(2)(A) and 20 CFR Section 683.270(a)
- WIOA Section 181(b)(2)(B) and 20 CFR Section 683.270(b)
- WIOA Section 181(b)(3) and 20 CFR Section 683.270(c) and 20 CFR Section 683.270(d)
- WIOA Section 181(c) and 20 CFR Section 683.600

BACKGROUND:

Formerly, under the Workforce Investment Act (WIA) and subsequently under WIOA, the ACWDB did adhere to a policy prohibiting the displacement of regular workers for the purpose of hiring WIOA participants through subsidized wage programs like the On-the-Job Training (OJT) program.

WSD 19-02 provides clear guidance and restriction of worker displacement and expands ACWDB's use of the policy to include identical prohibition for all job placements of WIOA participants whether it be part of an OJT, a customized training opportunity for new hires, cohort trainings with employer partners, or simply an unsubsidized job placement with a random employer.

POLICY:

Effective upon the issuance of this action bulletin:

- CSPs must NOT seek job placement opportunities for WIOA participants that cause or encourage:
 - Full or partial displacement (through termination, lay-off, or decrease in work hours) of regular workers employed by the company;
 - WIOA participants to be hired when the employer can rehire workers who had previously been laid-off from employment;
 - Existing workers to be denied promotional opportunities

Additionally, WSD 19-02 allows for workers who have been impacted or displaced by the hiring of WIOA participants to file a complaint through applicable WIOA grievance procedures.

At the moment that CSP staff become aware of a prohibited displacement, impacted workers should be referred to the WIOA grievance procedure and provided all relevant paperwork and informational hand-outs. Additionally, immediate notification should be made to the Career or Youth Services Program Coordinator at ACWDB.

The following Policy and Procedures have been adapted directly from WSD 19-02:

- As required under WIOA Section 181(b)(2)(A) and 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).
- 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.
- As required by WIOA Section 181(b)(3) and 20 CFR Section 683.270(c), a WIOA participant may not be employed in, or assigned to, a job if any of the following is true:
 - 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.

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. Local Areas are required 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 WSD18-05.

ACTION:

Career Service Provides should immediately adopt procedures that ensure compliance with this directive and provide immediate notification of this policy to appropriate staff who hold responsibility for job placement and/or customer case-management.

For information and inquiries please contact:

Michele G. Garcia
Workforce Board Systems Administrator
24100 Amador Street, 6th Floor
Hayward, CA 94544-1203
(510) 259-3802
mggarcia@acgov.org