

DIRECTIVE

WORKFORCE INVESTMENT ACT

Number: WIAD01-14

Date: March 11, 2002
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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: LAYOFFS, FURLOUGHS, TEMPORARY LAYOFFS AND LOCKOUTS

EXECUTIVE SUMMARY:

Purpose:

Due to the events of September 11, 2001, and a weak economy, many businesses are reducing their workforce in a variety of ways, including furloughs, layoffs, and temporary layoffs. Employer-employee disputes have also resulted in some lockouts. This directive provides dislocated worker eligibility guidance and definitions related to these issues.

Scope:

The requirements of this directive apply to Local Workforce Investment Areas (LWIA) and subrecipients responsible for determining eligibility of applicants for Title I-B dislocated worker activities.

Effective Date:

This directive is effective immediately.

REFERENCES:

- California Labor Code, Section 1132.8
- Title 5 United States Code (USC), Section 7511(a)(5)
- Workforce Investment Act of 1998, Section 101(9)

STATE-IMPOSED REQUIREMENTS:

This directive contains no State-imposed provisions.

FILING INSTRUCTIONS:

This directive finalizes Draft Directive WIADD-29, issued for comment on January 24, 2001. Retain this directive until further notice.

EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Special requests for services, aids, and/or special formats need to be made by calling (916) 654-8055 (Voice). TTY users, please call the California Relay Service at 711.

BACKGROUND:

The Workforce Investment Division has received inquiries about the eligibility of employees for the dislocated worker program that are locked out or been impacted by a variety of employer measures to reduce their workforce.

DEFINITIONS:

Layoff

Layoff means the permanent or temporary termination of employment of an employee because a position has been abolished, because of insufficient funds, because of lack of work, or for any other reason not reflecting discredit on the employee (such as, dismissal for inadequate performance, violation of workplace rules, cause, etc.).

Furloughs

Furlough means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons [Title 5 USC 7511(a)(5)]. As such, it is a temporary termination of employment or layoff.

Lockouts

Lockout means any refusal by an employer to permit any group of five or more employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of employment of such employees [Section 1132.8 of the California Labor Code].

DISCUSSION:

Individuals that are furloughed are laid off. Depending on the local definition of “unlikely to return,” the circumstances of the applicant, and local economic conditions, furloughed individuals may or may not be likely to return to their previous industry or occupation. The local areas are in the best position to make this determination. If these individuals are likely to return to their previous industry or occupation and need more than core services, they may be served as adults. In some cases, a business, company or corporation’s furloughs are in fact substantial layoffs and the unlikely to return provision does not apply. Local areas have the discretion to define “substantial layoff” since the definition depends on local economic conditions.

A lockout does not terminate the employer-employee relationship. Consequently, locked out employees are not eligible dislocated workers since they have not been terminated or laid off, are not eligible for unemployment compensation, and are likely to return to the same industry or occupation once the dispute is resolved. The same guidance applies to employees that are on strike. There may be locked out employees who for financial reasons seek other employment. These individuals may be served as adults.

In those cases mentioned above when individuals are not dislocated workers, local boards have the flexibility to serve them as adults even when there is a local priority to serve recipients of public assistance and other low-income individuals.

ACTION:

Bring this directive to the attention of all appropriate staff, One-Stop operators and all subrecipients.

INQUIRIES:

Please direct all inquiries about this directive to Phil Teeters at (916) 657-4533 or e-mail him at pteeters@edd.ca.gov.

/S/ BILL BURKE
Chief