

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 Local Workforce Development Areas (Local Area) and other recipients of WIOA funds, and is effective immediately.

This policy contains no state-imposed requirements.

This Directive finalizes Workforce Services Draft Directive *Worker Displacement Prohibition* WSD19-02, issued for comment on February 1, 2019. The Workforce Development Community submitted one comment during the draft comment period. A summary of comments, including all changes, is provided as Attachment 1.

This policy supersedes Workforce Services Directive *Worker Displacement Prohibition* WSD02-09, dated November 22, 2002. Retain this Directive until further notice.

REFERENCES

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- WIOA (Public Law 113-128) Sections 181(b)(2) and (3)
 - Title 20 *Code of Federal Regulations* (CFR) Section 683.270
 - Workforce Services Directive WSD18-05, Subject: *WIOA Grievance and Complaint Resolution Procedures* (September 4, 2018)

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.

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

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

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.

As a part of their oversight responsibilities, Local Workforce Development Boards are responsible for ensuring that there is a system in place that facilitates compliance with the above described non-displacement prohibitions in WIOA and its associated regulations.

ACTION

Bring this Directive to the attention of all relevant parties.

INQUIRIES

If you have any questions, contact your [Regional Advisor](#) at 1-916-654-7799.

/s/JAIME L. GUTIERREZ, Chief
Central Office Workforce Services Division

Attachments are available on the internet:

[Summary of Comments](#)