

DIRECTIVE NO: Supersedes: 35-07

TO: WIA Service Providers

EFFECTIVE: January 2011

SUBJECT: Worker Displacement Prohibition

REFERENCES:

- WIA Section 181(b)(2) and (3)
- Title 20 of the Code of Federal Regulations (Title 20 CFR), Section 667.270
- Senate Bill 1591
- California Unemployment Insurance Code (CUIC), Section 15051(g)

PURPOSE:

The purpose of this directive is to communicate federal and State policy and procedures regarding prohibitions against replacing regular employees with Workforce Investment Act (WIA) participants, and against infringing on the promotional opportunities of currently employed individuals.

POLICY AND PROCEDURES:

As required by WIA Section 181(b)(2)(A) and Title 20 CFR Section 667.270(a), participants in programs and activities authorized under WIA 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 WIA Section 181(b)(2)(B) and Title 20 CFR Section 667.270(b) prohibit the impairment of existing contracts for services or collective bargaining agreements. When a program or activity authorized under WIA 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 667.270(c), a WIA participant shall not be employed in 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 participant; 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).

As required by CUIIC Section 15051(g)(3), no participant shall be employed and no job opening shall be filled when the employer has not rehired a seasonal employee who has a history of regular seasonal employment with employers. This shall only apply to seasonal employment in the construction industry. The effective date of this prohibition is January 1, 2003.

The WIA, the federal regulations, and the CUIIC do not define the term “regular employee” as it pertains to the general WIA non-displacement prohibitions or as it pertains specifically to construction workers under CUIIC Section 15051(g)(3). However, it is the clear intent of WIA Section 181(b)(2)(A) that WIA 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 employees and temporary employees whose contracted term of employment has not ended. Furthermore, WIA Section 181(b)(3)(B) states that WIA participants may not be employed with an employer if that employer has reduced the workforce with the intent of filling the vacancies with the WIA participants.

The term “seasonal” as it relates to regular construction industry means-- a disadvantaged person who, for 12 months out of the 24 months prior to application for the program involved, has been primarily employed in construction labor that is characterized by chronic unemployment or underemployment.

Title 20 CFR Section 667.270(d) states that regular employees and WIA participants alleging displacement may file a complaint under the applicable grievance procedures found in WIA Section 181(c) and Title 20 CFR Section 667.600.

As a part of its oversight responsibility, MOEWD is responsible for ensuring that there is a system in place that facilitates compliance with the above described nondisplacement prohibitions in WIA, its associated regulations, and the CUIIC.

ACTION:

The Office of Economic and Workforce Development (OEWD) its service providers shall follow this policy. This policy will remain in effect from the date of issue until such time that a revision is required.



INQUIRIES:

Inquiries should be addressed to OEWD staff.

Rhonda Simmons
Director of Workforce Development
Office of Economic and Workforce Development

DRAFT

