




COMMONWEALTH OF VIRGINIA
VIRGINIA COMMUNITY COLLEGE SYSTEM

WORKFORCE INNOVATION AND OPPORTUNITY ACT

**The Virginia Community College System
VIRGINIA WORKFORCE LETTER (VWL) No. 19-04, Change 1**

TO: Local Workforce Development Boards

FROM: George Taratsas 
Director, WIOA Title I Administration

SUBJECT: Definitions Related to Dislocated Worker Eligibility

EFFECTIVE DATE: September 24, 2020

PURPOSE: To provide the workforce system guidance for services to Dislocated Workers under the Workforce Innovation and Opportunity Act (WIOA) Title I.

REFERENCES:

Section 3 – Definitions (15) Dislocated Workers;
Title 38 United States Code
20 CFR 680.130;
20 CFR 680.660;
Training and Employment Guidance Letter No. 10-09;
Training and Employment Guidance Letter No. 19-14;
Training and Employment Guidance Letter No. 16-16;
Training and Employment Guidance Letter No. 16-16, Change 1;
Training and Employment Guidance Letter No. 19-16;
Virginia Workforce Letter No. 15-02, Change 1 Eligibility Guidelines

REVISION HISTORY:

VWL 19-04: Definitions Related to Dislocated Worker Eligibility.

DEFINITIONS:

DISLOCATED WORKER—The term “dislocated worker” means an individual who—

(A)(i) has been terminated or laid off, or who has received a notice of termination or layoff, from employment;

(ii)(I) is eligible for or has exhausted entitlement to unemployment compensation; or

(II) has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 121(e), attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and

(iii) is unlikely to return to a previous industry or occupation;

(B)(i) has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive services other than training services described in section 134(c)(3), career services described in section 134(c)(2)(A)(xii), or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close;

(C) was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters;

(D) is a displaced homemaker; or

(E)(i) is the spouse of a member of the Armed Forces on active duty (as defined in section 101(d)(1) of title 10, United States Code), and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member; or

(ii) is the spouse of a member of the Armed Forces on active duty and who meets the criteria described in paragraph (16) (B).

DISPLACED HOMEMAKER—The term “displaced homemaker” means an individual who has been providing unpaid services to family members in the home and who—

(A)(i) has been dependent on the income of another family member but is no longer supported by that income; or

(ii) is the dependent spouse of a member of the Armed Forces on active duty (as defined in section 101(d)(1) of title 10, United States Code) and whose family income is significantly reduced because of a deployment (as defined in section 991(b) of title 10, United States Code, or pursuant to paragraph (4) of such section), a call or order to active duty pursuant to a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, a permanent change of station, or the service-connected (as defined in section 101(16) of title 38, United States Code) death or disability of the member; and

(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Armed Forces means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Uniformed Services means-

- a. the armed forces;
- b. the commissioned corps of the National Oceanic and Atmospheric Administration; and
- c. the commissioned corps of the Public Health Service.

Active Duty means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

Active duty for a period of more than 30 days means active duty under a call or order that does not specify a period of 30 days or less.

Active service means service on active duty or full-time National Guard duty.

BACKGROUND:

In section 680.130 of the WIOA, Governors and Local Workforce Development Boards (LWBDs) may establish policies and procedures for One-Stop centers to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIOA sec. 3(15). These policies and procedures may address such conditions as:

1. What constitutes "a general announcement" of a plant closing under WIOA sec. 3(15) (B)(ii) or (iii).
2. What constitutes "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters" for determining eligibility of self-employed individuals, including family members and farm workers or ranch hands, under WIOA sec. 3 (15) (C).
3. What constitutes "unlikely to return to a previous industry or occupation" under WIOA sec. 3 (15) (A)(iii), consistent with sec. 680.660.

GUIDANCE:

- A. The following guidance is provided for "a general announcement" of a plant closing under WIOA sec. 3 (15) (B) (ii): General announcement – a process by which a plant, facility, or enterprise makes the general public aware of its permanent closure. The announcement should include a projected closure date and should be verifiable. Documentation includes but is not limited to:
 - Newspaper or other publication indicating the facility, plant or enterprise is closing.
 - Television story or other media with a story about the closure.

 - Signage on the business indicating the closure of the facility.
 - Chamber of Commerce or other business organization information on closure.
 - WARN notice.

- B. The following guidance is provided for “unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters” to determine eligibility of self-employed individuals, including family members and farm workers or ranch hands, under WIOA sec. 3 (15) (C):

One of the following conditions may be used as documentation that self-employed individuals, including family members and farm workers or ranch hands, are unemployed (only for purposes of receiving services under WIOA Title I) because of general economic conditions in the community in which the individual resides or because of natural disasters causing the following:

- Failure of one or more businesses to which the applicant supplied a substantial proportion of products or services.
- Failure of one or more businesses from which the applicant obtained a substantial proportion of products or services.
- Substantial layoff(s) from, or permanent closure(s) of, one or more plants or facilities that support a significant portion of the State or local economy.

The documentation of the business failure itself may include, but is not limited to, one or more of the following:

- Issuance of a notice of foreclosure or intent to foreclose.
- Documentation that the farm, ranch or business has failed to return a profit during the preceding 12 months.
- Entry of self-employed individual into bankruptcy proceedings.
- Inability to obtain capital necessary to continue operations.
- Inability to make loans secured by tangible business assets.
- Debt to asset ratio of 50% or more.
- Other events indicative of the likely insolvency of the farm, ranch or business.

- C. To determine “unlikely to return” to previous industry or occupation, the applicant must fall into **one** of following:

- The applicant worked in a declining industry or occupation as documented on a list developed by the state or local area.
- There are limited job orders in the area at the time of application.
- The applicant does not have the necessary skills for re-entry into his/her former occupation.
- The applicant has applied for positions, consistent with unemployment insurance qualification requirements, in their previous industry/occupation within the six months prior to application and has not been offered suitable employment.
- The applicant is unable to return to previous industry/occupation because of an injury, disability or other physical limitation as documented by a medical professional.
- The applicant is unlikely to return to the previous industry or occupation due to a change in family circumstances that require higher income.
- Automation of previous job.
- Significant variance to normal seasonal employment patterns, including loss of wages due to a natural disaster.

- An applicant who is an “Unemployment Insurance Claimant” and who has been profiled as “likely to exhaust benefits” is to be considered as “unlikely to return”, such as an individual who has been required to attend a Reemployment Services and Eligibility Assessments (RESEA) meeting.
- Veterans transitioning from the military with a discharge that is anything other than **dishonorable**, are automatically considered “unlikely to return.”
- An applicant who has been furloughed or temporarily laid off for a minimum of 12 weeks with no return to date provided by the employer.

D. Providing services dislocated workers who are currently underemployed

Individuals who are underemployed may be eligible for services under the Dislocated Worker program. An individual who is dislocated from a full time job, who has found part-time employment may still be considered a dislocated worker. For example, an individual who was working full time in manufacturing who was laid off, but took up a part-time job working in fast food to pay for their bills may be considered a dislocated worker. These cases should be judged on a case by case basis to determine if the individual’s previous employment prior to being laid off constitutes their being underemployed. Factors to consider may include former compensation level or education and training required for the previous employment compared to current employment.

ACTION REQUIRED:

This is an information item to be considered while determining WIOA Title I Dislocated Worker eligibility.

INQUIRIES:

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