Arkansas Division of
Workforce Services

Workforce Innovation and Opportunity Act
Office of Employment Assistance

Policy Number: WIOA I-B – 2.4, Change 1 Effective Date: April 16, 2020

Eligibility for Dislocated Worker Program

PURPOSE:

The purpose of this policy is to outline the eligibility requirements for the Dislocated Worker (DLW) program in accordance with the Workforce Innovation and Opportunity Act of 2014 (WIOA), the WIOA Final Rule, Training and Employment Guidance Letters (TEGLs) published by the Employment and Training Administration of the U.S. Department of Labor (ETA), and policies of the Arkansas Workforce Development Board (AWDB).

REFERENCES:

WIOA § 3(15 & 16)
WIOA § 134(c)(2)(A)(xii)
WIOA § 134(c)(3)
20 CFR 680.130, 680.610, 680.630, & 680.650
20 CFR part 1010
Comments in WIOA Final Rule concerning §§680.610 & 680.650
Introduction to Part 680 of WIOA Final Rule
TEGL 19-16
10 U.S.C. 101 & 991(b)
38 U.S.C. 101(16)
38 U.S.C. 4215
ADWS Policy No. WIOA I-B – 1.2, Change 1 (Definitions)
ADWS Policy No. WIOA I-B – 2.1 (Common Eligibility Requirements)
ADWS Policy No. WIOA I-B – 2.2 (Veterans Priority of Service)
ADWS Policy No. WIOA I-B – 2.8 (Priority for Individuals with Barriers to Employment)
ADWS Policy No. WIOA I-B – 3.1 (Services for Adults and Dislocated Workers)

POLICY:

Dislocated workers are individuals who have lost jobs through no fault of their own. The goal of services to dislocated workers is to help them find appropriate jobs in in-demand industries [Introduction to Part 680 of WIOA Final Rule].

To be eligible for the Dislocated Worker program, an individual must be at least 18 years old *[20 CFR 680.120]*, must meet all criteria in ADWS Policy No. WIOA I-B – 2.1 (*Common Eligibility Requirements*), and must meet the eligibility criteria in one of the categories given below *[WIOA § 3(15 & 16)]*. As with all WIOA title I-B programs, priority for services must be given to veterans (see ADWS Policy No. WIOA I-B – 2.2 *Veterans Priority of Service*) *[20 CFR 680.650; 38 U.S.C. 4215; 20 CFR part 1010]*. Priority must also be given to dislocated workers who are individuals with barriers to employment (see ADWS Policy No. WIOA I-B – 2.8 *Priority for Individuals with Barriers to Employment*) *[TEGL 19-16]*.

Eligibility for the Dislocated Worker program does not make an individual eligible for all services available through the program. Certain eligibility requirements apply to some services, and the individual must demonstrate need for any services given. See ADWS Policy No. WIOA I-B – 3.1 (*Services for Adults and Dislocated Workers*) for eligibility requirements for specific services. Although there is no low-income priority of services for the Dislocated Worker program *[20 CFR 680.610]*, income may be a consideration in determining needed services.

Availability of services is based on the available funding in the local areas and the needs of participants. Nothing in this policy implies that an individual who qualifies for the Dislocated Worker program is guaranteed receipt of all individualized career services and training services provided through the program.

The State of Arkansas places no limits on the time between an individual's separation from a job and the determination of eligibility for the Dislocated Worker program. Local areas may develop policies creating such limits. To be eligible for Dislocated Worker services, the individual must have been unemployed and/or underemployed (as defined in the **Employment Status Clarification** section below) during the entire interval between the qualifying separation and the eligibility determination.

Categories of Eligibility

A person is classified as a dislocated worker (DLW) for the purposes of WIOA title I-B if the individual meets the criteria in **one** of the following categories *[WIOA § 3(15 & 16); 20 CFR 680.130]*:

Category A – Individual Lay-off. The applicant must meet all three of the numbered conditions *[WIOA 3(15)*(A)] OR the Special Veteran's Criterion *[TEGL 19-16]*:

1. Has been terminated or laid off or has received a notice of termination or layoff, from employment
2. Meets one of the following conditions concerning unemployment compensation:
   a. Is eligible for or has exhausted entitlement to unemployment compensation
   b. Has been employed long enough to demonstrate attachment to the workforce (that is, has received wages in at least one (1) quarter in the last year immediately prior to eligibility determination *[ADWS Policy No. WIOA I-B – 1.2, Change 1 - Definitions]*), but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer not covered under a state unemployment compensation law

3. Is unlikely to return to a previous industry or occupation (In compliance with TEGL 19-16, it is Arkansas state policy that local areas must define "unlikely to return to a previous industry or occupation.")

Special Veteran's Criterion: A separating service member qualifies as a dislocated worker under Category A if the separation is anything other than dishonorable, whether or not he or she receives or is eligible for Unemployment Compensation. A DD-214 from the Department of Defense or other appropriate documentation that shows a separation or imminent separation from the Armed Forces qualifies as the notice of termination or layoff to meet the dislocated worker definition. ETA policy dictates that a separating service member meets the Dislocated Worker requirement that an individual is unlikely to return to his or her previous industry or occupation. A separating service member may be provided career services while he or she is still part of the Active Duty military if the service member has an imminent separation date and the discharge will be anything other than dishonorable *[TEGL 19-16]*.

Category B – Business closure or substantial layoff. The applicant must meet one of the following conditions *[WIOA § 3(15)(B)]*:

1. 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
2. Is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days

Notes: An applicant who is employed at a facility at which the employer has made a general announcement that such facility will close, with no specific date or a date greater than 180 days in the future, may receive services other than training services described in WIOA § 134(c)(3), career services described in WIOA § 134(c)(2)(A)(xii), or supportive services. The person may qualify for these training, career, and supportive services when one of the above numbered conditions is met *[WIOA § 3(15)(B)]*.

In compliance with TEGL 19-16, it is Arkansas state policy that local areas must define "general announcement of a plant closing."

Arkansas state policy defines "substantial layoff" as at least 50 employees or 33% of the facility workforce, whichever is less, not including employees who have worked less than 6 months in the last 12 months and those who work an average of less than 20 hours a week.

In addition to the definition of "substantial layoff", Arkansas state policy clarifies that being laid off as a result of any substantial layoff must meet one of the following conditions:

1. Has been laid off permanently
2. Has been laid off indefinitely (no end date)
3. Has been laid off with a call-back date no less than 30 days after the lay-off date

Although upskill/backfill strategies are normally used with layoff aversion for incumbent workers *[TEGL 19-16]*, it is Arkansas state policy that upskilling may be used with dislocated workers declared eligible under Category B with the documented intent of the employer to rehire the worker and to give a pay increase to the worker after the training is completed. A letter of intent to rehire, including the required training and the increased pay, must be obtained from the employer before the training is arranged.

Category C – Self-employed individuals. An individual who was previously 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 qualifies as a dislocated worker *[WIOA § 3(15)(C)]*. In compliance with TEGL 19-16, it is Arkansas state policy that local areas must define "unemployed as a result of general economic conditions in the community to which an individual resides or because of natural disasters."

Category D – Displaced homemaker. To qualify as a displaced homemaker, an individual must meet all three of the following numbered conditions *[WIOA § 3(15)(D); WIOA § 3(16); 20 CFR 680.630]*:

1. Has been providing unpaid services to family members in the home (See ADWS Policy No. WIOA I-B – 1.2, Change 1 *Definitions* for the definition of "family")
2. Meets one of the following conditions of losing the income of another family member:
   a. Has been dependent on the income of another family member, but is no longer supported by that income (See ADWS Policy No. WIOA I-B – 1.2, Change 1 for definition of "family")
   b. Is the dependent spouse of a member of the Armed Forces on active duty, and the family income is significantly reduced because of a deployment, a call or order to active duty, a permanent change of state, or the service-connected death or disability of the member (See 10 U.S.C. 101 & 991(b), 38 U.S.C. 101(16), and ADWS Policy No. WIOA I-B – 1.2, Change 1 for definitions of these terms)
3. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment

Category E – Spouse of an active-duty member of the Armed Forces who meets one of the following conditions *[WIOA § 3(15)(E); 20 CFR 680.630; TEGL 19-16]*:

1. Has lost employment as a direct result of a relocation due to a permanent change in the duty station of such member
2. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment

Employment Status Clarification

An individual who meets one of the categories to be eligible for the Dislocated Worker program may be unemployed or underemployed at the time of eligibility determination *[TEGL 19-16]*. The intent of this rule is to allow dislocated workers to take lower-paying employment in order to meet financial obligations while looking for appropriate employment.

ETA encourages states to develop policies for determining the criteria for an individual to be considered "underemployed" *[TEGL 19-16]*. The Arkansas state policy for the definition of "underemployed" is someone who meets one of the following criteria:

1. Employed less than full-time and seeking full-time employment (Arkansas state policy defines "less than full-time" as either working less than 30 hours per week or working part-time as defined by the employer's policies.)
2. Employed in a position that is inadequate with respect to his or her skills and training
3. Employed and meets the definition of a low-income individual
4. Meets the definition of a dislocated worker and is currently employed, but whose earnings in the current job are less than the earnings in the job from which the individual was terminated. The State does not set a time limit for the time between termination and eligibility determination for Dislocated Worker services, but the individual must have been unemployed or underemployed during this entire interval.