

Eligibility for Dislocated Workers Policy

References:

Workforce Investment Act of 1998, Sections 101, 134 and 189; 20 CFR Parts 663 and 664; TEGL 22-04; TEGL 22-04, Change 1; TEGL 02-14; and Section 1141 of 10 U.S.C. Chapter 58, as amended.

Background:

Eligibility criteria for dislocated workers are defined under the provisions of the Workforce Investment Act rules and regulations.

Action:

After the 10 day review period, this policy is considered final. Questions and comments should be submitted in writing to Stan Odenthal, stan.odenthal@nebraska.gov.

Policy:

Nebraska's Dislocated Worker eligibility requirements under the Workforce Investment Act.

I. Purpose

To prescribe eligibility criteria and general conditions individuals must meet in order to become eligible for entry into the Workforce Investment Act (WIA) Title I Dislocated Worker employment and training activities.

General Eligibility Criteria - Applies to All Categories

- A. Dislocated Workers who receive services funded under Title I other than self-service or informational activities must be registered and determined eligible. Registration is the process for collecting information to support a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application.
- B. Equal Opportunity data must be collected on individuals during the registration process.
- C. There is no specified age for the dislocated worker program.
- D. All participants must be registered for the Selective Service, if applicable (see Section 3 of the Military Selective Service Act [50 U.S.C. App. 453]).
- E. Section 188 of WIA contains specific nondiscrimination provisions providing the availability of participation in WIA to citizens or nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, or parolees, or other immigrants authorized by the Attorney General to work in the United States. Individuals with employment authorization, including individuals granted relief under

the Deferred Action for Childhood Arrivals (DACA), may access any WIA services for which they otherwise would qualify.

- F. Individuals that have entered into other employment since a termination or layoff are considered eligible if the employment is less than one continuous year and the individual is earning seventy-five percent or less of the wage paid at the time of termination or layoff. Employment over one continuous year shall be considered an occupational change.
- G. Dislocated workers shall not be considered eligible for services with the same employer or in the same occupation.

II. Eligibility Criteria - Dislocated Worker

To participate in the Title I employment and training programs as "eligible dislocated workers," applicants must meet the criteria of one or more of the following categories:

Category 1: Terminated or laid off, or has received a notice of termination or layoff from employment, **and** is eligible for, or has exhausted entitlement to unemployment compensation (UC), **and** is unlikely to return to a previous industry or occupation.

Category 2: Terminated or laid off, or has received a notice of termination or layoff from employment, **and** has been employed for a sufficient duration to demonstrate 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** is unlikely to return to a previous industry or occupation.

Category 3: 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.

Category 4: Employed at a facility at which the employer has made a general announcement that such facility will close within 180 days;

Category 5: 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.

Category 6: Displaced Homemaker.

Further Clarifications and Definitions

Category 1 and Category 2:

1. "Eligible for" unemployment compensation includes any individual whose wages from employment would be considered in determining eligibility for UI under federal or state unemployment compensation laws. Eligible for UI should not be interpreted as receiving UI, as some eligible individuals may choose not to file a claim.
2. Individuals who are identified by the State of Nebraska Worker Profiling Program and are referred in writing by Employment Services shall be considered eligible.

3. Sufficient duration to demonstrate workforce attachment is defined as a minimum of six weeks.
4. Individuals who are offered (in writing) the option of early retirement instead of layoff and who plan to seek new employment still meet the definition of layoff.
5. According to TEGL 22-04, it is a Department of Labor policy that being discharged (under honorable circumstances) either voluntarily or involuntarily terminates an employment relationship between an individual and the military and thus falls within the scope of the termination component of the WIA definition of dislocated worker. The separating military personnel must also satisfy the other criteria for dislocated worker eligibility, including the requirement that the individual is “unlikely to return to a previous industry or occupation.”
6. TEGL 22-04 also addresses the issue of a military spouse who leaves his/her job to follow his/her spouse. By definition, a military spouse is an individual who is married to an active duty service member including National Guard or Reserve personnel on active duty. The surviving spouse of an active duty service member who lost his/her life while on active duty service in Afghanistan, Iraq or other combat-related areas is also considered to be a military spouse. When the spouse is unable to continue an employment relationship because of the service member’s permanent change of military station, or the military spouse loses employment as a result of the spouse’s discharge from the military, then the cessation of employment can be considered to meet the termination component of the WIA definition of dislocated worker. The military spouse must still meet the other criteria for dislocated worker eligibility, including the requirement that the spouse is unlikely to return to a previous industry or occupation.
7. Individuals are considered unlikely to return to previous industry/occupation if:
 - a) Occupation shows a zero or negative growth rate as documented by Labor Market Information (LMI), or
 - b) Employment Services confirms that in the previous sixty days there was a lack of job orders for that occupation compared to qualified job seekers, or
 - c) The local Chamber of Commerce or Economic Development representative confirms that the occupation or industry has shown a significant employment decline in the local labor market area, or
 - d) A plant closure or substantial layoff (within the labor market area in the same industry or occupation) has occurred in the last six months, or
 - e) They have acquired a handicap which affects their ability to perform previous occupation, or
 - f) They have been actively seeking, but unable to find employment in their previous industry or occupation for a period of ninety days or more, or
 - g) They were "involuntarily separated" from active military duty. A member of the armed forces shall be considered to be "involuntarily separated", if the member was on active duty or full-time National Guard duty on September 30, 1990, or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994, and
 - In the case of a regular officer (other than a retired officer), the officer is involuntarily discharged under other than adverse conditions as characterized by the Secretary concerned; or
 - In the case of a reserve officer who is on the active duty list, or if not on the active duty list, is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the

officer is involuntarily discharged or released from active duty or full-time National Guard (other than a release incident to transfer to retired status) under other than adverse conditions, as characterized by the Secretary concerned; or

- In the case of a regular enlisted member serving on active duty, the member is denied reenlistment, or involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned; or
 - In the case of a reserve enlisted member who is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the member is denied reenlistment or is involuntarily discharged or released from active duty (or full-time National Guard duty) under other than adverse conditions, as characterized by the Secretary concerned.
- h) In the case of military spouses, TEGL 22-04, Change 1, clarifies that a spouse's cessation of employment, due to the service member's permanent change of military station or his/her discharge from the military, may be considered to meet the "unlikely to return to a previous industry or occupation" criterion. The standard for determining the likelihood of return is a matter of judgment based on relevant circumstances.

Category 3:

1. Individuals that are likely to remain employed with the same employer or likely to retire instead of seeking new employment shall not be considered eligible.
2. Substantial layoff means any reduction in force which is not the result of a plant closure, and which results in an employment loss at a single site of employment during any thirty day period for at least 50 employees (excluding employees regularly working less than twenty hours per week).
3. A permanent plant closure occurs when any physical structure where business is conducted closes, or when the ability to provide service is discontinued as a result of an employer abandonment or business liquidation.

Category 4:

1. A general announcement of a planned closure is any document or statement, released by an official of the company, which specifies intent to close any employment site. A general announcement can be substantiated by a copy of the company document, a confirmed news/press release, or confirmed newspaper/magazine article. Confirmation must include the name and title of the company official, location of the facility, and the planned closure date. A WARN notice of planned closure may be considered a general announcement.
2. All authorized dislocated worker services may begin 180 days before the scheduled closure date.

Category 5:

1. Economic conditions resulting in the dislocation of a self-employed individual include, but are not limited to:
 - a) Failure of one or more businesses to which the self-employed individual either supplied or obtained a substantial proportion of products or services.
 - b) Permanent closure of, or substantial layoff from, one or more plants or facilities that support a significant portion of the state or local economy.

2. Categories of natural disasters include, but are not limited to, storm, tornado, flood, high water, wind-driven water, earthquake, volcanic eruption, landslide, mudslide, drought, fire, or explosion.
3. Categories of self-employed individuals are identified as farmers, ranchers, professionals, independent trades-people or other businesspersons who were self-employed and are presently unemployed, or are in the process of going out of business, as evidenced by one or more of the following events or circumstances:
 - a) Issuance of a notice of foreclosure or intent to foreclose.
 - b) Failure of the farm, ranch, or business to return a profit during the preceding 12 months.
 - c) Entry of the self-employed individual into bankruptcy proceedings.
 - d) Inability to make payments on loans secured by tangible business assets.
 - e) Inability to obtain capital necessary to continue operations.
 - f) Debt-to-asset ratio sufficiently high to be indicative of the likely insolvency of the farm, ranch, or business.
 - g) Other events indicative of the likely insolvency of the farm, ranch, or business.
4. Family members and farm/ranch hands of individuals identified above are eligible for program services, provided this was their primary employment and they are dislocated as a result of the permanent dissolution of the farm, ranch, or business.

Category 6:

A displaced homemaker is an individual who has been providing unpaid services to family members in the home, and who:

1. Has been dependent on the income of another family member but is no longer supported by that income, **and**
2. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.