

Fresno County Workforce Investment Board

2035 Tulare Street, Suite 203 ☎ Fresno, CA 93721 ☎ (559) 266-3742 ☎ Fax (559) 233-9633 ☎ www.jobsfresno.com

Blake Konczal, Chief Executive Officer

OPERATIONAL DIRECTIVE

FCWIB OD # 31-02

Date: December 4, 2002

To: All Fresno County Workforce Investment Board (FCWIB) Providers of Services

From: Blake Konczal, Chief Executive Officer

Effective Date: December 4, 2002

Reference: EDD Directive WIAD02-09

Subject: Worker Displacement Prohibition

The purpose of this Operational Directive is to communicate the general prohibitions against displacing and/or replacing regular employees with Workforce Investment Act (WIA) participants, impairing existing contracts for services and collective bargaining agreements, and infringing on the promotional opportunities of currently employed individuals.

The prohibitions apply, but are not limited to: Job Placement, On-the-Job Training, and/or Work Experience. WIA Section 181(b)(3) contains prohibitions against both replacing laid off employees with WIA participants and using WIA participants to replace employees whom have been terminated with the intent of so replacing them. These prohibitions are reiterated in the California Unemployment Insurance Code (CUIC) Section 15051(g), which became law with the signing by the Governor of Senate Bill 1591 on September 30, 2002. WIA Section 181(b)(3) further prohibits infringement on the promotional opportunities of currently employed workers.

The CUIC Section 15051(g) adds a prohibition against replacing laid off regular seasonal employees in the construction industry with WIA participants. The effective date of this new prohibition is January 1, 2003. Title 20 CFR Section 667.270(a) through (c) contains further information and clarification regarding federal requirements for ensuring that WIA participants do not displace other employees. Section 667.270(d) provides that regular employees and participants alleging displacement may file a complaint under applicable WIA grievance 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 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).

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:

1. Any other individual is on layoff from the same or any substantially equivalent job.
2. 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.
3. 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 CUIC 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 the employer. This shall only apply to seasonal employment in the construction industry. The effective date of this prohibition is January 1, 2003.

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 WIA participants.

The term "seasonal", as it relates to regular construction industry employees, is also not defined by the CUIC. In defining or interpreting this term, the FCWIB will consult with private sector representatives (and in particular, construction industry representatives) and labor representatives in Fresno County as well as other applicable industry and employee representatives that will provide a more precise definition of "seasonal" as it relates to the construction industry. Items that will be considered may include employment that is not year-round and employment that has a greater need for employees during certain peak periods of the year. Title 20 CFR Section 667.270(d) states that regular employees and WIA participants alleging displacement may file a complaint under FWCIB Grievance and Complaint Procedures.

FCWIB contracted Providers of WIA Services must ensure that a system is in place that facilitates compliance with the above described non-displacement prohibitions of WIA, its associated regulations, and the CUIC.