



Tompkins County Workforce Development Board Dislocated Worker Guidance and Interpretation Policy

Purpose

To provide guidance on the New York State Department of Labor (NYSDOL) interpretation on the Workforce Innovation and Opportunity Act (WIOA) definition of Dislocated Worker (DW) and recording DWs in the One-Stop Operating System (OSOS).

Tompkins County Workforce Development Board (TCWDB) must develop policy/procedure(s) for identifying DWs under the DW definition who are not profiled as “Likely to Exhaust” or UI Exhaustees, that adheres to this guidance. TCWDB must use the expanded NYSDOL interpretations of DW in this guidance in developing these policies and procedures to ensure all individuals who can qualify as DWs receive WIOA services.

The definition of DW under WIOA Section 3(15) includes five (5) categories of DWs per subsections (A) – (E). Eligibility for the DW program is based on the WIOA definition, but states have some flexibility in how this definition is applied.

This guidance provides the NYSDOL interpretation of the terms and guidelines within each of the WIOA Section 3(15) subsections to expand access to WIOA services for unemployed and underemployed populations and help address the workforce-related impacts of the COVID-19 public health emergency.

As of July 1, 2022, NYSDOL allows the following interpretation of the five (5) WIOA DW categories:

A. Category 1 – DW

- i. Has been terminated or laid off, or who has received notice of termination or layoff, from employment, including separation from active military service (unless dishonorably discharged); **and**
- ii. (1) Is eligible for or has exhausted entitlement to **unemployment compensation**;
or

NYSDOL Interpretation:

- ***“unemployment compensation”*** to include any compensation or assistance received under Subtitle A – Unemployment Insurance (UI) provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and any similar compensation received under subsequent federal law(s). This includes:
 - *Pandemic Unemployment Assistance (PUA)*;
 - *Federal Pandemic Unemployment Compensation (FPUC)*;

- *Pandemic Emergency Unemployment Compensation (PEUC);*
- *Federal-State Extended Benefits (EB); and*
- *Mixed Earner Unemployment Compensation (MEUC).*

As of January 18, 2021, NYSDOL uses an “hour-based” approach to define how part-time work impacts unemployment benefits, where individuals can work up to seven (7) days per week without losing full unemployment benefits for that week, if the individual is searching for work and meets current hourly or earnings criteria. Therefore, these individuals can also be designated as DWs.

(2) Has been employed for a **duration sufficient to demonstrate, to the appropriate entity at a Career Center referred to in WIOA 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**

NYSDOL Interpretation:

- ***“duration sufficient to demonstrate...an attachment to the workforce”*** as any labor performed in any occupation where the employee has worked for two full pay periods or one month, whichever is less.

NYSDOL extends this interpretation to also recognize individuals who have accepted stopgap employment in lieu of applying for UI benefits, and can therefore be designated as a DW.

- iii. Is **unlikely to return to a previous industry or occupation;**

NYSDOL Interpretation:

- ***“unlikely to return to a previous industry or occupation”*** if they have been unemployed since their termination/layoff or is underemployed.

*An individual collecting UI and exempt from work search because they are a member of a union who receives work through a union hiring hall, on temporary layoff (TLO), or seasonal loss of employment where the employer has given a definite return to work date within eight weeks are **not considered unlikely to return and thus are not a DW.***

Individuals who are active UI claimants profiled as “Likely to Exhaust Benefits” or UI Exhaustees, are considered to meet the definition of DW and can be designated as such.

*Participant attestation is sufficient to determine if the individual is unlikely to **“return to a previous industry or occupation.”** Self-attestation must include a “reasonable” explanation of why the individual would be unable to return to the previous occupation. This explanation must include an analysis of Labor Market Information (LMI) data around the economic outlook of the occupation or a personal reason why the individual would be unable to return to a previous occupation.*

Staff may also utilize “Dislocated Worker (DW) Eligibility Desk Guide and One Stop Operating System (OSOS) and File Requirements” in making a determination on

whether someone can be considered “unlikely to return to a previous industry or occupation.”

B. Category 2 – DW Mass Layoff or Closure

- i. Has been terminated or laid off, or has received a notice of termination or layoff, from employment because of any permanent closure of, or any **substantial layoff** at, a plant, facility, military installation, or enterprise;

NYSDOL Interpretation:

- **“substantial layoff”** as the layoff of five (5) people or 10% of that employer’s workforce, whichever is less.
- 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 WIOA 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 or military installation will close;*

C. Category 3 – DW Self-Employed

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, a nationwide public health emergency, or other unforeseen events.

NYSDOL Interpretation:

- **“the community in which the individual resides”** as the geographic area in which the individual resides or as the industry, sector, or occupational community not bound by physical location which may be affected by general economic conditions. An individual’s economic community may extend beyond the geographical location of that person and/or their business or source of income. Conditions that affect general economic conditions may include the logistical supply chain or location of product/service delivery.

D. Category 4 – DW Displaced Homemaker

Is an individual who has been providing **unpaid services** to family members in the home and who has been:

- i. Either **(a) dependent on the income** of another **family member** but is **no longer supported by that income; or (b)** Is the dependent spouse of a member of the Armed Forces on active duty and whose family income is **significantly reduced** because of a deployment, a call or order to active duty, a permanent change of station, or the service-connected death or disability of the member; **and**

NYSDOL Interpretation:

- **“unpaid services”**: *any service provided without an employer/employee relationship between family members.*

- **“dependent on the income”**: receiving financial or other form of assistance from a family member to meet any basic need (food, shelter, clothing, transportation, or any other need necessary for self-sufficiency) of the individual.
 - **“family member”**: a spouse, dependent child, spouse’s child, daughter-in-law, son-in-law, brother, sister, mother, father, grandparents, grandchild, step-brother, step-sister, step-parents, parents-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, guardian, ward, or domestic partner.
 - **“no longer supported by that income”**: the removal of financial or other form of assistance that is provided to meet any basic need of the individual. This definition is not limited to the removal of the total assistance received by the individual, rather the assistance received per basic need, and may include individuals who work part-time if that work does not cover the individual’s basic need.
 - **“significantly reduced”**: any reduction in family income due to deployment.
- ii. Is either (a) unemployed and is **having trouble** in obtaining or upgrading employment; or (b) **underemployed** and is **having trouble** in obtaining or upgrading employment.

NYSDOL Interpretation:

- **“having trouble”**: being unsuccessful in finding employment or upgrading employment, as determined by self-attestation.
- **“underemployed”**: Displaced Homemakers to include, but not be limited to,
 - (1) individuals employed less than full-time who are seeking full-time employment;
 - (2) individuals who are employed in a position that is inadequate with respect to their skills and training;
 - (3) individuals who are employed who meet the definition of a low-income individual in WIOA sec. 3(36);
 - (4) individuals who are employed, but whose current job’s earnings are less than the self-sufficiency wage rate set by the LWDB, or are not sufficient based on their training and experience or compared to their earnings from their previous employment; and
 - (5) individuals who are employed in stopgap employment.

E. Category 5 – DW Spouse of a Member of the Armed Forces

- i. Is the spouse of a member of the Armed Forces on active duty, 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 required WIOA criteria.

Under the WIOA regulations at 20 CFR 680.660, service members exiting the military, including, but not limited to, those who receive or are eligible for Unemployment Compensation for Ex-Service members (UCX), generally qualify as DWs. Generally, a separating service member needs a notice of separation, either a DD-214 from the Department of Defense, or other appropriate documentation that shows a separation or imminent separation from the Armed Forces. These documents meet the requirement that the individual has received a notice of termination or layoff, to meet the required DW definition. ETA policy generally dictates that a

separating service member meets the DW requirement that an individual is unlikely to return to his or her previous industry or occupation in the military.

II. Additional DW Designations

In addition, NYSDOL recognizes the following individuals as DWs:

A. Individuals dislocated due to Foreign Trade, including participants in the Trade Adjustment Assistance (TAA) Program who are part of a worker group covered under a certified trade petition, which demonstrates an increase in imports, a shift or acquisition in production, or a loss of sales and/or production which contributed importantly to the worker(s)'s separation or threat of separation (additional information on the TAA program is located in Workforce Development System Technical Advisory (WDS TA) #21-03);

B. Long-term unemployed (LTU) individuals: Individuals who receive Unemployment Compensation benefits for at least 27 weeks and are still unemployed; and

Note: LTU may include those individuals originally designated DWs as part of a National Dislocated Worker Grant (NDWG) and who remain unemployed once they are no longer funded with the NDWG.

C. Underemployed individuals: Individuals who have been determined to be DWs may remain DWs, even after they have obtained employment, if they are:

- i. individuals employed less than full-time who are seeking full-time employment;
- ii. individuals who are employed in a position that is inadequate with respect to their skills and training;
- iii. individuals who are employed who meet the definition of a low-income individual in WIOA sec. 3(36);
- iv. individuals who are employed, but whose current job's earnings are less than the self-sufficiency wage rate set by the LWDB, or are not sufficient based on their training and experience or compared to their earnings from their previous employment; and
- v. individuals who are employed in stopgap employment.

Recording DWs in OSOS

The One-Stop Operating System (OSOS) translates DWs identified in WIOA Section 3 (15) subsections (A) – (E) and those dislocated due to foreign trade into categories as follows:

(A) – Category 1 – Dislocated Worker;

(B) – Category 2 – Mass layoff or closure;

(C) – Category 3 – Self-employed;

(D) – Category 4 – Displaced homemaker;

(E) – Category 5 – Dislocated due to Foreign Trade (includes TAA participants); and

(F) – Category 6 – Spouse of a member of the Armed Forces.

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LTU and underemployed individuals, other than those designated as Displaced Homemakers, should be recorded into OSOS under Category 1 – Dislocated Worker.