

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Layoff Aversion
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TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: Layoff Aversion Definition and the Appropriate Use of Workforce Investment Act Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver

1. **Purpose.** The purpose of this Training and Employment Guidance Letter (TEGL) is to: 1) define layoff aversion, and 2) provide guidance on the appropriate use of incumbent worker training (IWT) for layoff aversion if using local or Rapid Response funds via waiver.
2. **References.** Workforce Investment Act of 1998 (WIA), as amended (29 U.S.C. 2801 et seq.); WIA Regulations, 20 CFR parts 652 and 660-671; Training and Employment Guidance Letter No. 26-09, "Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010."
3. **Background.** The U.S. Department of Labor's (DOL) mission is "good jobs for everyone." The core mission of Employment and Training Administration (ETA) programs, particularly Workforce Investment Act (WIA) programs, is to provide unemployed jobseekers with the training and employment services needed in order to obtain good jobs. While services to employed workers is authorized in some limited provisions, WIA programs are primarily intended to serve unemployed, not employed, workers.

However, some individuals may need assistance to maintain or retain a good job by enhancing their skills or learn new technologies and procedures in a changing and challenging economic environment. Without appropriate training that allows existing workers to gain the necessary skills to operate new processes or technologies, employers may find it necessary to lay off workers with obsolete skills. Averting layoffs is one of the functions of the public workforce

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investment system, and given the range and diversity of workforce needs, states need some flexibility to use a limited amount of WIA resources to supplement resources from other federal, state and local government agencies and private or nonprofit organizations.

In order to balance the primary mission of WIA programs to serve unemployed workers with the need to allow a certain amount of flexibility for the workforce system to avert layoffs, since Program Year (PY) 2009, ETA has approved waivers to use a limited portion of WIA local formula or Rapid Response funds for IWT on the condition that the training be provided only in the context of layoff aversion.

This TEGL provides a definition for layoff aversion, provides information on identifying layoff risks, and gives guidance on the appropriate application of WIA funds to conduct IWT for layoff aversion with a waiver.

4. **Definition of Layoff Aversion.** ETA considers a layoff averted when: 1) a worker's job is saved with an existing employer that is at risk of downsizing or closing; or 2) a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no or a minimal spell of unemployment.
5. **Benefits of Layoff Aversion.** There are many benefits that accrue to workers, employers, taxpayers, and communities when layoffs are averted. For workers, the loss of income and benefits associated with unemployment can be financially devastating and risks the well-being of the worker's family. Retaining the same position or transitioning to a different position with retooled skills at a comparable wage maintains financial stability compared to the loss of income sustained when drawing unemployment compensation, which on average is 36 percent of the worker's average weekly wage when employed.

For employers, retaining a known reliable worker can save costs associated with severance; costs associated with having unfilled, vacant job openings; costs associated with recruiting and orienting a new employee with requisite skills to the procedures, culture and systems of the company that the former worker already knew; and intangible costs such as avoiding lower overall company morale for remaining workers when their co-workers are laid off. Additionally, layoffs often lead to increases in that employer's unemployment compensation tax rates.

For taxpayers, averting layoffs saves outlays from unemployment trust funds and other taxpayer-funded services that the unemployed worker may draw. Finally, for communities, averting layoffs is far less disruptive and costly compared to providing emergency food and health services to financially strained families, and the loss of property taxes associated with high home foreclosure rates. It also facilitates the maintenance of overall community economic wellness, which can be threatened when a mass layoff creates tertiary layoffs due to reduced overall consumption in the community.

6. **Layoff Aversion Strategies.** There are a wide variety of approaches and strategies available to assist in this endeavor, including early identification of at-risk companies, assessing the needs of such companies, and delivering services to address risk factors. States can and should develop collaborative partnerships with a range of organizations and intermediaries that can help them identify and design the appropriate interventions, such as the Department

of Commerce's Trade Adjustment Assistance for Firms or the Manufacturing Extension Partnership (MEP), Chambers of Commerce, Small Business Development Centers, community-based organizations, and others. Rapid Response activities such as those described in WIA regulations at 20 CFR 665.320(d), training and other services funded by WIA statewide discretionary funds, WIA-funded dislocated worker services, employment services, and prefeasibility studies are among the many varied strategies and funding sources that the workforce system can deploy in its efforts to avert layoffs, mitigate their impacts, and maintain good jobs for all. IWT is another approach that the public workforce investment system may provide to avert layoffs, using either WIA statewide discretionary funds ("15 percent funds"), which can be used for IWT without the need for a waiver, or a limited portion of local formula or Rapid Response funds via an approved waiver.

- 6. Identifying Layoff Risks.** Determining the appropriate moment for workforce system involvement in layoff aversion is challenging. How does the workforce system identify companies at risk of layoff? How early should intervention occur? Other than the instance of an employer's layoff announcement, the period leading up to such an announcement is often unknown to those outside the management of a company. By the time a layoff is formally announced or otherwise made public, many options for assisting the company and workers to address threats are no longer feasible. It may be too late for layoff aversion strategies and the workforce system will begin to intervene in response to the layoffs or dislocations announced. On the other hand, providing publicly-funded training to incumbent workers (who are otherwise ineligible for WIA-funded services) when there is no foreseeable threat of layoffs in the future in order to generally "increase the competitiveness" of the employer/business, would not constitute a "layoff aversion strategy."

ETA believes that states are in the best position to create the policies and procedures for identifying a potential layoff situation. While there are no absolute rules for identifying the appropriate point for workforce system involvement in a layoff situation, states can and should develop policies and indicators and establish criteria for identifying at-risk employers. These state-level policies and criteria will then guide local areas in designing programs that will effectively identify firms that are at risk for layoffs, thereby limiting guesswork and the potential for misuse of public workforce investment funds.

Layoff aversion requires collaboration among partners with different capabilities and funds. Some states have had success with early indicator systems that are helpful in assessing an at-risk company. These systems use indicators such as declining sales, supply chain issues, adverse industry market trends, changes in management behavior or ownership, and other indicators to identify when a company may be at risk of a layoff. Other states and local Workforce Investment Boards are operating a collaborative program with the MEP centers to avert layoffs. In recent years, these programs have operated in California, Indiana, Michigan, Missouri, New York, Oklahoma, Pennsylvania, and others. This effort helps establish early warning networks, identify firms that are at risk, and develop strategies to help avoid layoffs. Forming partnerships with other state and Federal service providers is advantageous and crucial to developing a full spectrum of layoff aversion tactics such as facilitating access to capital, streamlining and/or improving the quality of production processes, or accessing new customers. Training, including IWT, is another tactic that, when appropriately deployed, can effectively avert layoffs either by saving the job with an existing employer through skill upgrades or by providing the worker with skills to transfer to a new job.

7. Using Incumbent Worker Training for Layoff Aversion. IWT is an allowable statewide activity, described at WIA Section 134(a)(3). Under 20 CFR 665.220, states may establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services for purposes of statewide activities. The regulations further define an incumbent worker served with statewide funds as “an individual who is employed, but...does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers at 20 CFR 663.220(b) and 663.310.” When provided with statewide funds, IWT is not limited to layoff aversion activities.

In PY 2009, ETA granted many states approval to use a portion of local Adult and/or Dislocated Worker funds to conduct IWT, but only for the purpose of averting layoffs. Similarly, ETA granted waivers to states to use a portion of Rapid Response funds for IWT for layoff aversion activities. IWT with these waivers is limited to layoff aversion because serving unemployed workers must be the workforce system’s focus in the current challenging economy, and resources should not be diverted to other uses at the expense of those most in need. However, to the extent some dislocations can be averted, ETA believes that some flexibility with these funds is warranted. TEGL No. 26-09 addresses the particular parameters of these two waivers in more detail; this TEGL seeks to clarify the layoff aversion component.

In implementing the IWT waiver, states must have criteria in place that states and local areas can use to determine a layoff risk, and when and whether IWT is an appropriate response. When developing criteria, states should consider whether absent the training a good job will be lost or degraded, and whether with the training the job will be retained or improved. States can use the following considerations to determine whether the training they plan to offer would be helpful in averting a layoff and whether the training itself is appropriate.

Employer Assessment

- The company remains open, but it is phasing out a function which will lead to layoffs unless the workers can be retrained to perform new functions. For example, a large hospital that transitions from paper-based medical records to electronic medical records may need medical records staff with different or more advanced skills than the staff that handles the paper-based records. Unless these workers can be retrained in electronic records, the hospital may choose to lay them off and hire other workers with the needed skills.
- A worker’s job has changing skill requirements as a result of external economic or market forces, significant changes in technology or operating processes, rapidly changing industry or occupational job requirements, or emergence of new products.
- The changing skill requirements are outside of normal skill growth and upkeep that would be provided by the employer.
- Training programs reasonably prepare workers to address these skill gaps.
- The employer demonstrates a commitment to retain employees or otherwise provide a tangible benefit to employees who receive IWT.

Worker Assessment

- Unless provided with training, the potentially laid-off worker does not have marketable, in-demand skills.
- The new skills can be attained in a reasonable period of time.
- The worker has not received a formal layoff notice. Such workers can be served with regular WIA Dislocated Worker funds.

- There exists a strong possibility of a job, either with the existing employer or a new employer, if the potentially laid-off worker attains new skills.

These are not absolute criteria, but are meant to prompt the development of state criteria on the use of the waived funds for IWT. If it is determined that providing IWT with waived funds might not be appropriate, states and local areas could consider other methods and fund sources to assist employers with upgrading the skills of their workforce. The primary goal of limiting IWT to layoff aversion is to ensure that it is worthwhile to invest public WIA funds in order to serve an employed individual to prevent his or her layoff, rather than serving a worker who is already unemployed. Evidence that a layoff could be avoided justifies an appropriate use of the waived funds. ETA plans to monitor states' use of IWT waivers to determine if IWT was delivered to avert layoffs. State may also consider establishing metrics to measure the success of such training investments.

8. Layoff Scenarios and Identifying Appropriate Workforce System Involvement. The workforce investment system has a variety of funds and service strategies available to avert layoffs or mitigate their impacts. Below are scenarios to clarify which funding sources and strategies may be most appropriate in a given situation.

- *Scenario 1: A worker receives a layoff notice.* The workforce system could provide assistance through Rapid Response and/or WIA Dislocated Worker funds.
- *Scenario 2: A worker's layoff has been certified as trade-related.* Assuming the worker group has been certified as eligible for Trade Adjustment Assistance (TAA), the workforce system could utilize TAA funds, including TAA for communities authorized under the American Recovery and Reinvestment Act of 2009.
- *Scenario 3: An employer has been determined to be at risk for layoff unless workers receive training on a new production technology.* The workforce system could provide IWT using its WIA statewide discretionary funds or IWT using local formula or Rapid Response funds with an approved waiver, assuming the situation meets the state-developed criteria for the use of such funds. The workforce system could also leverage other funds in the community such as from employers, community colleges, and others.
- *Scenario 4: An employer wants to re-train workers to produce a new product line.* The workforce system could provide IWT using its WIA statewide discretionary funds, fee-for-service, and/or leverage other funds in the community such as from employers, community colleges, and others. Use of waived funds for IWT is not appropriate because a layoff risk has not been identified.

9. Action Requested. States with approved waivers for IWT should examine their policies to ensure that they include criteria for determining when IWT is appropriate and also reflect the definition of layoff aversion provided in Section 5.

10. Inquiries. Inquiries may be addressed to the appropriate ETA regional office.