

Chapter DWD 816

DISLOCATED WORKER PROGRAM

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Note: Ch. ILHR 816 as it existed on March 31, 1987 was repealed and a new chapter ILHR 816 was created effective April 1, 1987. **Chapter ILHR 816 was renumbered to chapter DWD 816 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DWD 816.01 Purpose. This chapter is to establish rules to govern the granting of funds by the department for dislocated workers programs as described in s. 106.15, Stats., 29 USC 1651 (b) and 1652. This chapter does not preclude the department from pursuing federal funds under 29 USC 1651 301 (a) and (c).

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DWD 816.02 Definitions. In this chapter, unless otherwise provided the following words and phrases have the designated meaning.

(1) "Act" means the Job Training Partnership Act of 1982, 29 USC 1501 et seq. 1658.

(2) "Adult" means an individual 18 years of age or older.

(3) "Chief of local elected official (CLEO)" means:

(a) In the case of the Northwestern Wisconsin Service Delivery Area, the governing body as stated in 29 USC 1503;

(b) In the case of all other service delivery areas, the elected county executive or the county board chairperson in counties that have no elected county executive.

(4) "Department" means the department of workforce development.

(5) "Dislocated farmer" means an individual 18 years old who is a farmer, as defined in sub. (9), and who is a dislocated worker according to provisions of sub. (6) (b) described in s. 106.15, Stats.

(6) "Dislocated worker" as described in s. 106.15, Stats., and 29 USC 1652 means an individual to whom any of the following applies:

(a) The individual has been terminated or laid off or has received a notice of termination or lay-off from employment, is eligible for or has exhausted his or her entitlement to unemployment compensation, and is unlikely to return to his or her previous industry or occupation.

(b) The individual has been terminated, or has received a notice of termination of employment, as a result of any permanent closure of a plant or facility.

(c) The individual is long term unemployed and has limited opportunities for employment or reemployment in the same or similar occupation in the area in which the individual resides, including any older individual who may have substantial barriers to employment by reason of age.

(7) "Division" means the division of employment and training within the department of workforce development.

(8) "Division grantee" means an organization or agency receiving a grant of JTPA funds or related GPR funds for employment and training programs directly from the division.

(9) "Farmer" means an individual 18 years of age or older whose primary employment is the operation of farm premises as described in s. 106.15, Stats.

(10) "Farm premises" means the real estate and buildings that comprise the farm.

(11) "Grant" means an agreement between the division and the grantee whereby the division provides funds to carry out specific programs, services, or activities.

(12) "Grantee" means an organization or agency receiving a grant of JTPA funds or related GPR funds for employment and training programs directly or indirectly from the division.

(13) "Grantor" means the division or other organization or agency from which the grantee receives its grant.

(14) "Independent party" means a hearing examiner designated by the division who has no direct relationship or prior involvement in the case.

(15) "Long term unemployed" means any individual who is unemployed at the time of eligibility determination and has been unemployed for 15 or more of the 26 weeks immediately prior to such determination.

(16) "Matching funds" means the contribution made by the grantee of non-federal funds, or other funds authorized by JTPA to the grant which underwrites the direct cost of employment or training services provided by state or local programs, private non-profit organizations, or private for profit employers.

(17) "Private industry council (PIC)" means the council established for each SDA in accordance with section 102 of the Job Training Partnership Act of 1982.

(19) "Proposal" means the application for funding.

(20) "Proposal guidelines" means the instructions for completing a proposal.

(21) "Request for proposals (RFP)" means the competitive process of soliciting proposals to provide a service or administer a project.

(22) "Regulations" means Department of Labor – Employment and Training Administration's Implementing Regulations for Programs under the Job Training Partnership Act, 20 CFR, Parts 626 through 638.

(23) "Review panel" means a panel chaired by the secretary, that includes the secretary of the department of development, the director of the state technical college system, the chairperson of the SJTCC and 3 other members of the SJTCC as appointed by the secretary.

(24) "Secretary" means the secretary of the department of workforce development.

(25) "Service delivery area or (SDA)" means a geographic area designated by the governor for administering JTPA funds in accordance with section 101 of the Job Training Partnership Act of 1982, of which:

(a) One-third of the members represent business and industry including members of private industry councils.

(b) At least one-fifth of the members represent the state legislature and state agencies.

(c) At least one-fifth of the members represent units of local government.

(d) At least one-fifth of the members represent the general public, the eligible population, community based organizations, and local education agencies.

(26) "State job training coordinating council (SJTCC)" means the council which is appointed by the governor to provide advice in planning, coordinating and monitoring JTPA and related activities and services and which is comprised of individuals representing the following groups:

(a) One-third of the membership of the state council shall be representatives of business and industry (including agriculture, where appropriate) in the state, including individuals who are representatives of business and industry on private industry councils in the state.

(b) Not less than 20% of the membership of the state council shall be representatives of the state legislature and state agencies and organizations, such as the state educational agency, the state vocational education board, the state advisory council on vocational education, the state board of education (when not otherwise represented), state public assistance agencies, the state employment security agency, the state rehabilitation agency, the state occupational information coordinating committee, state postsecondary institutions, the state economic development agency, state veterans' affairs agencies or equivalent, and such other agencies as the governor determines to have a direct interest in employment and training and human resource utilization within the state.

(c) Not less than 20% of the membership of the state council shall be representatives of the units or consortia of units of general local government in such state (including those which are administrative entities or grantees under this Act) which shall be nominated by the chief elected officials of the units or consortia of units of general local government; and

(d) Not less than 20% of the membership of the state council shall be representatives of the eligible population and of the general public, representatives of organized labor, representatives of community-based organizations, and representatives of local educational agencies (nominated by local educational agencies).

(27) "Unemployed individual" means an individual who did not work during the 7 consecutive days prior to application to a JTPA program, who made specific efforts to find a job within the past 4 weeks prior to application, and who was available for work during the 7 consecutive days prior to application. The 7 days requirement does not apply if the individual has been suffering from an illness.

(28) "Underemployed" means being employed full-time with annualized family income below the poverty level, or employed part-time and seeking full-time employment.

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87; am. (9), r. (18), Register, May, 1988, No. 389, eff. 6-1-88; correction in (23) made under s. 13.93 (2m) (b) 6., Stats., Register, November, 1995, No. 479; **corrections in (4), (5), (6) (intro.), (7), (9), (15) and (24) made under s. 13.92 (4) (b) 6. and 7., Stats., Register November 2008 No. 635.**

DWD 816.03 Administration. The division is responsible for soliciting proposals for the funds, for reviewing applications, for making comments or recommendations to the review panel on the disposition of proposals, for executing grant agreements, for authorizing payments and otherwise implementing grant obligations entailed in grants made under the terms of this chapter, for monitoring the provision of services, for receiving reports required by the department, and for ensuring that audits are conducted.

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87.

DWD 816.04 Eligible participants. Any person participating in an employment and training program offered by a grantee must be eligible under 29 USC 1504, 1577 and 1652. In

addition, any person served under s. 106.15, Stats., shall meet the requirements of either sub. (1) or (2).

(1) (a) The person shall be dislocated from his or her place of employment within the last 5 years; and

(b) A person over 22 years of age shall have at least 2 years continuous or intermittent previous work history. A person 21 years of age or younger shall have at least 4 years previous work history. Victims of a permanent plant or facility closing are exempt from all work history requirements; and

(c) The person does not have a specific recall date from an employer.

(2) The person is a dislocated farmer, according to provisions of s. DWD 816.02 (5). A farmer is considered an individual who has been terminated, or has received notice of termination of employment, as a result of permanent closure of a facility if conditions in pars. (a) and (b) are met:

(a) The farmer demonstrates that one or more of the following has occurred:

1. A notice of foreclosure or intent to foreclose upon the farm premises has been issued;

2. The farm has not realized a profit during the 12 months immediately preceding;

3. The farmer has filed a petition in bankruptcy or has been adjudicated bankrupt;

4. The farmer cannot obtain capital necessary to continue operations;

5. The farmer owes outstanding payments on a loan to finance farm premises; or

6. The amount of the farmer's debts totals at least 70% of the amount of the farmer's assets.

(b) The farmer states in writing that the operation of farm premises has terminated or will terminate as a result of one or more circumstances under par. (a) and that because of the termination of those operations, it is unlikely that the farmer will be primarily employed in farming.

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87; **correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DWD 816.05 Eligible applicants. Any public, private non-profit or private for-profit agency or organization is eligible to apply for funds and provide program services.

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87.

DWD 816.06 Plan development. The division, with the advice of the review panel, shall develop a plan for the dislocated worker program. The plan shall comply with 29 USC 1558.

(1) The plan shall address at least the following: objectives for the dislocated workers program, program priorities and description, performance standards and coordination with other programs.

(2) The plan developed by the division shall be provided to the speaker and minority leader of the assembly, the president and minority leader of the senate and made available to the public for a review and comment period at least 30 days prior to its implementation. It shall also be reviewed by the state job training coordinating council for consistency with the governor's coordination and special services plan required by the Job Training Partnership Act (JTPA).

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87.

DWD 816.07 Types of programs. The division may establish, in the plan for the dislocated workers program, portions of the program's fund to respond to special needs of Wisconsin's dislocated workers. These may include programs such as:

(1) Wisconsin re-employment program or WREP — provides funding for long term projects that will result in returning dislocated workers to productive employment through areas of emphasis such as: improving coordination with statewide economic development efforts and the state's other employment and train-

ing programs; lessening the impact of major plant closings and major layoffs; serving targeted groups of women, minorities, handicapped, older workers and dropouts; lessening the impact of a decline in an occupation or industry; or serving the long term unemployed.

(2) Special response fund — provides short-term flexible funding for projects responding to emergencies when workers are affected by a plant closing or major layoff, and to new or expanding industries or companies needing assistance in the training of their work force.

(3) Wisconsin farmers fund — provides funding for projects to serve dislocated family farmers who are forced out of business due to the factors stated in s. 106.15, Stats., and who shall find other permanent, long-term employment.

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DWD 816.08 Proposal solicitation and content.

(1) All projects funded by the dislocated workers program shall comply with the plan. The method for awarding dislocated worker grants shall be through a request for proposals unless another method is approved by the review panel.

(2) Each RFP, including the content and evaluation criteria, shall be developed by the division under guidance of the review panel and the plan.

(3) Each proposal shall provide: a statement of need; a description of any skill development or training to be provided; occupations that are in demand within the targeted geographic area; how the program is to be coordinated with other employment and training programs; how labor organizations have been involved in planning the project when a substantial number of their members will be served; how local private industry council and chief elected officials have been involved and if they have been provided 45-days for review and comment or submitted a letter commenting on proposal to the division; a description of past performance; an itemized estimate of cost; the minimum rate of placement; the minimum average wage of placement; maximum cost per placement; and the administrative capacity of the applicant.

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87.

DWD 816.09 Proposal review. Preliminary screening: the division shall conduct a preliminary screening for all proposals. The division shall award points for a proposal based on the following criteria and point system:

(1) (a) Performance standards: the division may award from 0 to 3 points to proposals based on compliance with the required minimum placement rate, average wage at placement and maximum cost per placement.

(b) Cost limitations: the division may award from 0 to 1 point to proposals based on their compliance with cost limitations established for the administration, support and training budget line items.

(c) Private industry council and chief local elected officials: the division may award 0 to 1 point on the basis that proof has been provided that the local private industry council and chief local elected officials, or the designated chief local elected officials in the case of a consortium, have been provided 45 days for review and comment or submitted a letter commenting on proposal to the division.

(d) Completeness: the division may award from 0 to 6 points based on the proposal's inclusion of the 6 following items: a statement of need; a description of any skill development or training to be provided; a description of occupations that are in demand within the targeted geographic area; how the proposed project is coordinated with other employment and training programs; an itemized estimate of cost; and a description of the administrative capacity of the applicant.

(e) Local labor union involvement: the division may award 0 to 1 point on the basis of written support of the local labor union when a substantial number of its members will be served; one point will automatically be awarded to proposals in cases where no union members will be served.

(f) History of demonstrated poor performance or fiscal non-compliance: the division shall not award points for this item. The division shall inform the review panel of previous poor performance such as failure to achieve performance standards or continued performance below planned levels or fiscal non-compliance.

(2) Proposals that score 12 points in the initial screening shall qualify for referral to the review panel and secretary for consideration. In addition, the division shall provide the review panel with the information described in sub. (1) (f), summaries of the qualifying and recommendations for funding alternatives which shall best fulfill the objectives of the dislocated workers plan.

(3) The review panel shall make recommendations to the secretary on the selection of grantees based on a request for proposals. The panel shall consider all of the factors listed in s. 106.15, Stats. Severity of need may include factors such as the unemployment rate, the number of unemployed or dislocated workers and the economic conditions of the area. Appropriate skill development or training may include factors such as the demand for the occupation in the area to which relocation assistance shall be provided. In addition, the review panel may consider geographic area to be served; any recommendations of the local private industry council and chief local elected officials; demonstrated effectiveness; cost effectiveness; placement rate; administrative capacity of the applicant; and ability to raise matching funds.

(4) The secretary shall receive and review recommendations from the review panel and shall render a final decision on funding.

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87; am. (1) (f), (2) to (4), Register, May, 1988, No. 389, eff. 6-1-88; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DWD 816.10 Reporting requirements. All grantees are required to maintain fiscal and programmatic records as required by the division and to make periodic and special reports as required by the division.

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87.

DWD 816.11 Complaints/grievances. Complaints regarding decisions by grantees of the Job Training Partnership Act (JTPA) program in Wisconsin. Complaints and Grievances Act shall be made to the division after procedures described in JTPA-PL. 97-300 section 144., (a) to (c), 20 CFR Part 629.51 to 629.58 have been exhausted by local jurisdictions. The division requires that the following procedures be used in processing complaints on alleged violation of JTPA Act or its regulations:

(1) General requirements:

(a) Each grantee will establish and/or maintain grievance procedures that meet JTPA and s. 106.15, Stats., requirements. Grantees shall describe those procedures in their training plans.

(b) Each grantee shall assure that all subgrantees with which it contracts under JTPA or s. 106.15, Stats., are informed of these requirements and that they maintain grievance procedures consistent with such requirements.

(c) Each grantee shall assure that every employer with which it contracts, including on the job training (OJT) employers who hire JTPA participants and receive division funds, shall maintain a grievance procedure relating to the terms and condition of employment.

(d) The division administrator, on behalf of the governor, makes the final decision on grievances arising from the operation of the JTPA and s. 106.15, Stats., programs.

Note: The division does not have the authority to decide on complaints related to alleged discrimination. These complaints are adjudicated by the US department of labor, directorate of civil rights. (DCR) or the equal rights division of the department of workforce development.

(2) Grievances of a non-criminal nature alleging violations of the Job Training Partnership Act, s. 106.15, Stats., regulations, grants, and agreements shall include the following:

(a) Complaints/grievances from grantees, sub-grantees, applicants for division funds, JTPA participants, applicants, labor unions, community based organizations or other interested parties.

(b) Complaints files against the grantee/sub-grantees, employers, employment agencies, labor unions, or the division.

(3) Requirements and processes for grievances on issues regarding the operation of the JTPA, s. 106.15, Stats., programs, when complaints are filed at the grant recipient level.

(a) Complaints shall be filed in writing within one year of alleged occurrence, except complaints based on handicapped discrimination which shall be filed within 180 days of the alleged violation with the grantee.

(b) The respondent shall conduct a hearing within 30 calendar days of the filing date.

(c) The respondent shall issue a decision to the complainant and the respondent within 60 calendar days of the complaint filing date.

(d) Complainants who receive an adverse decision, or do not receive a decision on their grievance during the 60 day period, may request a governor's review if they file a request within 10 calendar days of receiving the adverse decision or 10 calendar days after the 60-day decision period ends, whichever is applicable.

(e) Governor's review (for complaints filed at the grant recipient level). The division on behalf of the governor, shall conduct the governor's review and issue a decision within 30 calendar days after the request for review has been accepted.

(f) If a decision is not issued within 30 calendar days of the request for a governor's review, the complainant may appeal to the U.S. secretary of the department of labor to determine if the JTPA or applicable federal regulations have been violated. Such an appeal shall be made within 10 days after the governor's review decision was due.

Note: That local and state procedures shall be exhausted before resorting to federal administrative procedures.

(4) Requirements and processes of complaints for issues regarding JTPA, s. 106.15, Stats., when the division is the respondent.

(a) Complaints shall be filed in writing within one year of alleged occurrence, except complaints based on handicapped discrimination which shall be filed within 180 days of the alleged violation.

(b) When the division is the respondent, the hearing shall be conducted by a hearing examiner within 30 calendar days. The examiner shall follow established procedures, consider all facts, relevant administrative rules, the JTPA and its regulations.

(c) The examiner shall issue a decision to the complainant and to the respondent within 60 calendar days of the complaint filing date.

(d) Any complainant who receives an adverse decision or who did not receive a decision on the grievance during the 60 day period may file a request for a governor's independent review.

(e) Governor's independent review (for complaints filed when the division is the respondent). The division shall designate a hearing examiner to conduct the governor's independent review. The examiner shall make recommendations to the division administrator. The division administrator on behalf of the governor shall issue a decision within 30 calendar days after the request for review has been accepted.

(f) If a decision is not issued within 30 calendar days of the request for a governor's independent review, the complainant may appeal to the U.S. secretary of the department of labor to determine if the JTPA or applicable federal regulations have been violated. Such an appeal shall be made within 10 days after the governor's independent review decision was due.

Note: That local and state procedures shall be exhausted before resorting to federal administrative procedures.

Note: Complaints/grievances which fall under federal jurisdiction are allegations of discrimination based on race, national origin, sex, age, religion and participant status and shall be filed with the US department of labor, directorate of civil rights (DCR) within 180 days of the alleged discrimination. Complainants have the option to also file discrimination complaints with the equal rights division of the department of workforce development within 300 days of the alleged discrimination.

History: Cr. Register, March, 1987, No. 375, eff. 4-1-87; **corrections in (1) (a), (b), (d), (2) (intro.), (3) (intro.), and (4) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**