

Dislocated Worker Policy, Certification Procedures & NYSDOL Interpretations

Purpose

This policy establishes guidance for certifying a Dislocated Worker as provided in PGL 22-01 by NYS Department of Labor.

Background

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. The United States Department of Labor (USDOL) Employment and Training Administration (ETA) encourages states and Local Workforce Development Boards (LWDBs) to review their DW policies to ensure impacted individuals who may be eligible receive the services they need.

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. Therefore, as of July 1, 2022, NYSDOL allows the following interpretation of the five (5) WIOA DW categories, as well as Trade Act DWs.

Policy/Procedures

The following instructions for completing the DW Certification Form are set by Dislocated Worker Category and are as directed in PGL 22-01. Additionally, the DW Certification Form is attached at the end of this document.

Category 1 – Unlikely to Return to a Previous Occupation/Industry

1. Has been terminated or laid off.... No additional interpretations.
2. Is unlikely to return to a previous industry or occupation...
Interpretation: NYSDOL considers an individual “unlikely to return...” if they have been unemployed since their termination/layoff or is underemployed. Individuals who are active UI claimants profiled as “Likely to Exhaust Benefits” or UI Exhaustees are considered to meet 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 is unable to return to the previous occupation. This explanation must include an analysis of LMI data around the economic outlook of the occupation or a personal reason why the individual would be unable to return.
3. Is attached to the workforce
 - a. Is eligible for or has exhausted UI benefits
Interpretation: NYSDOL uses an “hour-based” approach to define how part-time work impacts UI benefits, where individuals can work up to 7 days per week without losing full UI 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.

- b. Has worked for two full pay periods....

The actual language is “Individual 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.”

Interpretation: NYSDOL interprets “duration sufficient to demonstrate” 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.

Category 1 OSOS & File Requirements:

1. Update Work History Reason for Leaving to DW1. If there is no job entry on the Work History tab, one must be added.
2. Add a comment stating how the customer meets the eligibility requirements for DW1:
 - a. If customer was automatically determined to be a DW by OSOS (OSOS Pgms/PA tab, Current Programs section, WIOA Dislocated Worker has a Reg Date but no Term Date): “OSOS automation determined customer is a DW1/unlikely to return to a previous industry or occupation.” **File requirements:** None
 - b. If the customer is a UI Exhaustee (OSOS Gen Info tab UI Claimant Status shows Exhaustee): “Customer is a DW1 and unlikely to return to a previous industry or occupation due to being a UI exhaustee.” **File requirements:** None.
 - c. If the customer answered yes to all three categories in the chart above, the comment must state how the customer meets the eligibility requirements for DW1. A customer may be unlikely to return to a previous industry or occupation for economic or personal reasons.
 - i. When the cause is economic, the OSOS comment must include an analysis of labor market information (LMI) data such as:
 1. Customer was employed as a telephone operator and is unlikely to return to that occupation -- O*Net shows this occupation is declining rather than growing.
 2. Customer was employed at Family Video. Per Newsweek (2/27/21), Family Video is the nation’s last video rental chain, and they are closing all remaining stores. An internet search showed there are no other video rental stores in customer’s commuting area so he’s unlikely to return to this industry.
 3. Customer was employed as a floral designer, but the business closed due to declining sales. She is unlikely to return to that occupation; BLS indicates that employment will decline 20% between 2020 and 2030.
 - ii. When the cause is personal, the OSOS comment must include the reason (following SENSE guidelines and being careful with sensitive information):
 1. Customer was employed as a medical coder for 23 years but is unlikely to continue in that occupation because he lacks the newest certifications that are currently required in the field.
 2. Customer was employed as a plumber for many years but is unlikely to return to the occupation because she is no longer able to perform hard physical labor.
 3. Customer has a lot of experience in the restaurant industry but will not return to that industry for medical reasons (see file for details). In this case, staff

entered a note in the file that the customer is being served under the Opioid grant and is seeking employment outside the restaurant industry since he feels there is illicit drug use in the industry he wishes to avoid.

4. Customer worked in the banking industry but is unable to continue working in that industry due to personal legal circumstances.
5. Customer is long-term unemployed; she worked as a CNA in the early 2000s but was laid off during the recession and has not worked since. She is unlikely to return to that occupation because her certification expired and she is no longer capable of heavy lifting.
6. Customer is long-term unemployed; he exhausted 26 weeks of UI benefits and is therefore unlikely to return to the same industry or occupation.

- iii. **File requirements:** Signed application or enrollment form; signed DW Certification form; verification from employer; Rapid Response list; notice of layoff; Public announcement (such as WARN Notice) with follow-up cross-match with UI database.

Category 2 – Mass Layoff or Closure

1. Was employed at a business that closed or experienced a substantial layoff
Interpretation: NYSDOL interprets “substantial layoff” as the layoff of five (5) people or 10% of that employer’s workforce, whichever is less.
2. Is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days. No additional interpretations.
3. 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. No additional interpretations.

Category 2 OSOS & File Requirements:

1. Update Work History Reason for Leaving to DW2. If there is no job entry on the Work History tab, one must be added.
2. Add a comment stating how the customer meets the eligibility requirements for DW2.
3. **File requirements:** (for the first category – closure/substantial layoff only) include one of the following: verification from employer; worker list from firm; cross-match with state MIS database; signed DW Certification form; case notes or self-attestation (self-attestation only in cases when other allowable source documentation is not available due to records retention timelines expiring.)

Category 3 – 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.

Interpretation: NYSDOL interprets “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.

Category 3 OSOS & File Requirements:

1. Update Work History Reason for Leaving to DW3. If there is no job entry on the Work History tab, one must be added.
2. Add a comment stating how the customer meets the eligibility requirements for DW3.
3. **File requirements:** Signed DW Certification form.

Category 4 – Displaced Homemaker

1. An individual who has been providing **unpaid services** to family members in the home and who has been 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 Interpretations:

- i. “Unpaid services” as any service provided without an employer/employee relationship between family members.
 - ii. “Dependent on the income” as receiving financial or other forms 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.
 - iii. “Family member” as 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.
 - iv. “No longer supported by that income” as 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.
 - v. “Significantly reduced” as any reduction in family income due to deployment.
2. 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 Interpretations:

- i. “Having trouble” as being unsuccessful in finding employment or upgrading employment, as determined by self-attestation.
- ii. “Underemployed” Displaced Homemakers includes, but is 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.

Category 4 OSOS & File Requirements:

1. Update Work History Reason for Leaving to DW4. If there is no job entry on the Work History tab, one must be added.
2. Add a comment stating how the customer meets the eligibility requirements for DW4.
3. **File requirements include one of the following:** Self-attestation; signed DW Certification form; copy of spouse's layoff notice; copy of spouse's death record; copy of spouse's permanent change status (PCS) orders (for a military move or assignment); copy of divorce records; copy of applicable court records; copy of bank records (showing financial dependence on spouse, no separate individual income support, or no employment income earned); needs assessment; or signed individual employment plan (IEP).

Category 5 – Dislocated Due to Foreign Trade

Individuals dislocated due to foreign trade, including participants in the Trade Adjustment Assistance (TAA) Program. No additional interpretations.

List of Trade Act petitions can be found at: www.doleta.gov/tradeact/petitioners/taa_search_form.cfm

Category 5 OSOS & File Requirements:

1. Update Work History Reason for Leaving to DW5 and complete all required fields. If there is no job entry on the Work History tab, one must be added.
2. Add a comment stating how the customer meets the eligibility requirements for DW5.
3. **File requirements include one of the following:** verification from employer; Rapid Response list; notice of layoff; public announcement with follow-up cross-match to UI database; signed DW Certification form.

Category 6 – Spouse of a Member of the Armed Forces

1. 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**
2. Is the spouse of a member of the Armed Forces on active duty and who meets required WIOA criteria.
 - a. 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.

Category 6 OSOS & File Requirements:

1. Update Work History Reason for Leaving to DW6. If there is no job entry on the Work History tab, one must be added.

2. Add a comment stating how the customer meets the eligibility requirements for DW6.
3. **File requirements include one of the following:** Self-attestation; signed DW Certification form; copy of spouse's layoff notice; copy of spouse's death record; copy of spouse's Permanent Change of Station (PCS) Orders (for a military move or assignment); copy of divorce records; copy of applicable court records; copy of bank records (showing financial dependence on spouse, no separate individual income support or no employment income earned); needs assessment; signed individual employment plan (IEP).

Additional DW Designations

In addition to the WIOA DW categories, NYSDOL also recognizes the following individuals as DWs:

1. 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.
2. Underemployed individuals: Individuals who have been determined to be DWs may remain DWs, even after they have obtained employment, if they are
 - a. individuals employed less than full-time who are seeking full-time employment;
 - b. individuals who are employed in a position that is inadequate with respect to their skills and training;
 - c. individuals who are employed who meet the definition of a low-income individual in WIOA sec. 3(36);
 - d. 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
 - e. individuals who are employed in stopgap employment.

Stopgap Employment: Work an individual does only because they have lost the customary work for which their training, experience or work history qualifies them (individual is underemployed).

Employment would be considered stopgap if:

- The employment is not in the individual's primary occupation;
- The salary is substantially below the salary of the individual's primary occupation;
- The individual is working substantially under the skill level of their customary occupation; and
- The individual has been in the stopgap job less than one (1) year.

There may be times when stopgap employment provides a self-sufficient wage (e.g., contract employment, seasonal employment, or employment obtained through a temporary employment services agency). Such employment would not change the individual's DW status. The determination about whether an individual's employment since dislocation is stopgap employment must be made on a case-by-case basis and take into consideration an individual's personal, family, financial, and employment situation.

Recording DWs

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

Category 1 – Dislocated Worker;

Category 2 – Mass layoff or closure;

Category 3 – Self-employed;

Category 4 – Displaced homemaker;

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

Category 6 – Spouse of a member of the Armed Forces.

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

Resources

- Workforce Innovation and Opportunity Act (WIOA) 3(15);
- Training and Employment Guidance Letter (TEGL) No.23-19;
- TEGL No.19-16
- New York State Department of Labor (NYSDOL) Program Guidance Letter (PGL) #22-01.

Attachments

Attachment A – Dislocated Worker Certification Form

Dislocated Worker Certification Form

Participant Name _____

Do not give to customer to fill out. Complete with customer using DW Certification Instruction sheet.

Category 1 – Unlikely to Return to a Previous Occupation/Industry

Yes	No	Must answer yes to all three sections (Unless OSOS has determined customer is DW or UI exhaustee)
		1. Has been terminated or laid off, or who has received a notice of termination or layoff, from employment, including separation from active military service (under other than dishonorable conditions)
		2. Is unlikely to return to a previous industry or occupation (must select one) <input type="checkbox"/> a. For economic (labor market) reasons <input type="checkbox"/> b. For personal reasons <input type="checkbox"/> c. Has been unemployed since termination or layoff, or is underemployed <input type="checkbox"/> d. Has exhausted or is likely to exhaust UI benefits (A customer collecting UI & exempt from work search because they are: a union member who receives work through the union, on temporary layoff, or seasonal loss of employment with a definite return to work date within 8 weeks does not qualify as a DW under this category.)
		3. Is attached to the workforce (must select one) <input type="checkbox"/> a. Is eligible for or has exhausted UI benefits <input type="checkbox"/> b. Has worked for two full pay periods or one month, whichever is less

Category 2 – Mass Layoff or Closure

Yes	No	Must answer yes to any one of the following:
		1. Was employed at a business that closed or experienced a substantial layoff: <input type="checkbox"/> a. Business closed <input type="checkbox"/> b. 5 people or 10% of the employer’s workforce were laid off, whichever is less
		2. Is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days
		3. Is employed at a facility at which the employer has made a general announcement that such facility or military installation will close (no firm date or date not within 180 days)

Category 3 – Self-Employed

Yes	No	Must answer yes to the following:
		Was self-employed but is unemployed because of general economic conditions in the community in which the individual resides or because of natural disasters

Category 4 – DW Displaced Homemaker

Yes	No	Must answer yes to all three sections
		1. Has been providing unpaid services (any service provided without an employer/employee relationship) to family members in the home
		2. Unemployed/Underemployed (must select one) <input type="checkbox"/> a. Is unemployed & having trouble in obtaining or upgrading employment <input type="checkbox"/> b. Is underemployed & having trouble in obtaining or upgrading employment
		3. Is attached to the workforce (must select one) <input type="checkbox"/> a. Is eligible for or has exhausted UI benefits <input type="checkbox"/> b. Has worked for two full pay periods or one month, whichever is less

Category 5 – Dislocated Due to Foreign Trade

Yes	No	Must answer yes to the following:
		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 separation or threat of separation.

Category 6 – Spouse of a Member of the Armed Forces

Yes	No	Must answer yes to one of the following:
		1. Is the spouse of a member of the Armed Forces on active duty & who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member
		2. Is the spouse of a member of the Armed Forces on active duty who is unemployed or underemployed and is having trouble in obtaining or upgrading employment

Participant's Signature

Date

Staff Signature

Date

Staff Use Only

The above individual has been certified as a dislocated worker as identified: (check all that apply)

DW1 DW2 DW3 DW4 DW5 DW6