



October 24, 2023

Workforce Innovation and Opportunity Act Policy Letter No. 15-16.2

To: Workforce Innovation and Opportunity Act (WIOA) Local Workforce Development Boards (WDBs), Fiscal Agents, and OhioMeansJobs Center Operators

From: Matt Damschroder, Director

Subject: Rapid Response Program Requirements -- Layoff Aversion

I. Purpose

The Ohio Department of Job & Family Services (ODJFS) is committed to providing employer customers with workforce solutions throughout the business cycle and may do so by helping local workforce development areas (local areas) to avert or mitigate employer layoffs and closures using rapid response (RR) to fund layoff aversion (LA) strategies as outlined in this policy.

II. Effective Date

Immediately

III. Rescission

ODJFS, Workforce Innovation and Opportunity Policy Letter No. 15-16.1, Rapid Response Program Requirements – Layoff Aversion, (April 1, 2019).

IV. Background

Under WIOA, workforce development, education, and economic development partners coordinate services and activities to meet the needs of employers throughout the business cycle, including assisting with potential reductions in their labor force. Local WIOA-funded providers of employer services and other partners in workforce, economic development, and education programs should coordinate to provide a range of layoff aversion (LA) strategies as part of their routine and on-going menu of business services (e.g., identifying employers who are at-risk of downsizing, assessing employer needs, facilitating access to capital, providing worker training, helping to improve quality or production processes, etc.)

LA strategies save jobs and increase economic productivity by preventing or deferring layoff events, shortening the duration of unemployment, and minimizing the negative impacts on workers, the employer, and the community. A layoff is averted when:

1. A worker's job is saved with an existing employer that is at risk of downsizing or closing;
2. A worker at risk of dislocation transitions to a different job with the same employer; or
3. A worker at risk of dislocation transitions to a new job with a different employer and experiences no or a minimal period of unemployment.

LA strategies can be effective tools to assist employers in developing the skilled workforce necessary to adapt to the changing economy, to stay in business, and to retain talent. The local area should opt to

deploy LA strategies that are most likely to retain jobs and critical industries in the region, promote new industry-sector growth strategies and new jobs in the economy, and provide improved coordination between partners. Such strategies may include, but are not limited to:

1. Assisting employers in managing reductions in force, which may include:
 - a. Early identification of firms at risk of layoffs (e.g., early warning networks or trend monitoring);
 - b. Assessment of the needs of, and options available to, at-risk firms (e.g., asset mapping, employee buy-outs, or succession planning); and
 - c. The delivery of services, or referrals to other resources and providers, to address the assessed needs;
2. Ongoing engagement, partnership, and relationship-building activities with businesses in the community to create an environment for successful LA efforts and to enable the provision of assistance to dislocated workers in obtaining reemployment as soon as possible;
3. Funding feasibility studies to determine if a company's operations may be sustained through a buyout, employee ownership, or other means to avoid or minimize layoffs;
4. Implementing incumbent worker training (IWT) programs;
5. Connecting companies to:
 - a. Short-time compensation (e.g., SharedWork Ohio) or other programs designed to prevent layoffs or to quickly reemploy dislocated workers, available under Unemployment Insurance programs;
 - b. Employer loan programs for employee skill upgrading; and
 - c. Other Federal, State, or local resources as necessary to address other business needs that cannot be funded by WIOA;
6. Establishing linkages with economic development activities at the Federal, State, and local levels, including Federal Department of Commerce programs and available State and local business retention and expansion projects;
7. Partnering or contracting with business-focused organizations to assess risks to companies, propose strategies to address those risks, implement services, and measure impacts of services delivered;
8. Conducting an analysis of the suppliers of an affected company to assess their risks and vulnerabilities from a potential closing or shift in production of their major customer;
9. Engaging in proactive measures to identify opportunities for potential economic transition and for fulfilling worker training needs in growing industry sectors or expanding businesses; and
10. Connecting businesses and workers to short-term, on-the-job, or customized training programs and apprenticeships before or after layoff to help facilitate rapid reemployment.

In addition to providing services following a layoff or closure, the WIOA RR program is designed to be proactive by helping local areas implement these and other LA strategies.

V. Definitions

Imminent Layoffs: Workforce reductions by an employer that, according to documented foreseeable circumstances, are likely to occur within the next 36 months, and likely to result in the potentially affected workers remaining out of work for at least 6 months.

Incumbent worker: An employed individual who meets the Fair Labor Standards Act requirements for an employer-employee relationship and has an established employment history with the employer for six months or more or is a member of a training cohort in which most of the workers have such an employment history.

Incumbent worker training (IWT): Training designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment. IWT is conducted with the commitment of the employer to retain or avert the layoffs of the incumbent workers trained. IWT may be funded with local adult or dislocated worker formula grants or with state RR funding.

Layoff aversion (LA): A strategy that prevents and/or minimizes unemployment for employees of companies that have either announced layoffs or are struggling and at risk of downsizing.

Ohio's Designated Case Management System: An information tracking system as defined in Ohio Administrative Code 5101:9-30-04 which is used by workforce professionals to gather and report program data and employer event information on the delivery of services for the following programs: Rapid Response, WIOA, Wagner-Peyser, Veteran, Apprenticeship, Migrant and Seasonal Farmworker, Foreign Labor Certification, and Trade.

VI. Local Workforce Development Area Requirements

A. Local Area Strategic Framework for LA Activities

Local workforce development boards (WDB) have the unique opportunity to implement proactive programs meant to predict and avert layoffs, thereby saving jobs and helping their communities grow and prosper. Under the strategic direction of the WDB, the partners in the local area must establish processes and procedures to:

1. Effectively deliver services to employers throughout the business cycle (i.e., normal expansions and contractions of the economy);
2. Develop an operations protocol for local area and regional partner programs that provide employer services to coordinate their efforts;
3. Identify opportunities to conduct LA activities;
4. Determine the appropriate LA strategy or mix of strategies that best fits each opportunity;
5. Develop the RR funding request for implementation of LA strategies when local area resources are insufficient to address the local needs;
6. Implement the approved LA strategies; and
7. Capture the data associated with LA in the appropriate State-designated information systems.

When the need to implement one or more LA strategies has been identified, local area partner or community resources available to implement the strategy must be explored, including WIOA adult and dislocated worker formula funds. If the expected costs of implementing the necessary LA strategies exceed the resources available in the local area, a request for RR funding may be submitted in accordance with the WIOA policy letter on funding for RR layoff aversion.

Local areas may request RR funding to implement either IWT programs or proactive LA strategies.

B. RR Incumbent Worker Training (RRIWT)

One of the most commonly implemented and effective LA strategies is the provision of IWT to enable workers to obtain the skills necessary to avert potential layoffs. If local resources (e.g., the portion of WIOA formula funding that may be spent on IWT, the employer's own resources, and other partner funding) are not sufficient to adequately address the training needs for an employer facing layoffs, then local areas may request RRIWT funding. Local areas may apply for up to \$4,200 for each incumbent worker that will receive training.

Many employers express the need to upgrade the skills of their workforce to enhance profitability and competitiveness, but the primary focus of the RR program must remain on serving unemployed workers and averting layoffs. Therefore, RRIWT funds will not be awarded for skill upgrades that are unrelated to imminent layoffs. Examples of situations that would justify the need for RRIWT funding to prevent imminent layoffs include, but are not limited to:

- An employer experiences ongoing losses or declining sales that are likely to be mitigated by IWT;

- A significant share of the employer's revenue is derived from contracts or agreements that risk being discontinued if worker skills are not upgraded to complete the deliverables; or
- Successful implementation and operation of new equipment or technology necessary for the sustained viability of the company requires specialized or intensive worker training.

When requesting funds for RRIWT, the local area must include explanations of how the employer is facing imminent layoffs and how they would be averted through the provision of training for the workers.

RRIWT services must be implemented in compliance with the IWT guidelines (i.e., employer eligibility requirements, training provider considerations, procurement options, allowable costs, etc.), except for the provision allowing IWT for skill upgrades unrelated to imminent layoffs, which is not permitted under RRIWT funding but may be provided with local funds.

Upon receipt of RRIWT funds, the local area must ensure that impacted workers are not turned away from services based upon their residency.

C. Proactive LA Strategies

Local areas may request LA funds for strategies to launch innovative solutions unrelated to imminent layoffs by a specific employer or group of employers, such as creating an early warning network; assessing risks to industries or companies and proposing strategies to mitigate the risks; and mapping local assets that benefit employers.

Local areas should utilize proactive LA strategies that target industries that will most significantly improve the labor market and economy of the region. This includes industries that:

- Provide the types of long-term wages, benefits, and career opportunities that will allow individuals and families to become and/or remain financially independent and self-sufficient;
- Employ a relatively large share of the local or regional workforce;
- Have established career pathways for low-income populations;
- Diversify job opportunities for workers in the labor market; and
- Create economic spin-off activity or technological advancement.

When requesting RR funding for a proactive LA strategy, the local area shall list in the application the planned goals or outcomes expected to result from the project, which must be stated as numeric values (e.g., number of employer needs assessments completed, percentage decrease in annual layoffs, dollar value of economic development funds leveraged, etc.). This goal-setting will enable evaluation of the success of the project upon completion.

D. Reporting Requirements

If LA funding is approved, ODJFS will send a notice of approval to the local area, which will include a rapid response identification number (RRID) for the employer. Each approved LA strategy must be entered into Ohio's designated case management system for tracking layoff events within ten days of ODJFS's issuance of the notice of approval.

For RRIWT projects, each trainee must be entered into the mini-incumbent worker module into Ohio's-designated case management system within 30 days following the start of his or her training. The reporting of outcomes is also required within 30 days after the conclusion of each worker's training period.

Depending on the LA strategy, the local area may be required to register individuals receiving services as participants into Ohio's designated case management system under one or more special grant offices, which will enable the reporting of long-term outcomes to evaluate the success of the LA project. Instructions on the tracking of RR data under a special grant office, if required, will be provided when the funding request is approved.

In addition to the above data collection requirements, local WDBs may choose to collect more information, if it is needed to conduct successful LA strategies. Given the sensitive nature of a business's financial status and of all personal data, local WDBs should be cautious in gathering confidential information beyond the requirements of this policy.

Upon completion of the LA project, the local area must submit an evaluation of the effectiveness of the area's implementation of the planned strategies, which shall include a report on the completion status of each planned goal or outcome. The evaluation may also include an assessment of collaboration among partners that assisted with the LA project; the efficiency of service delivery to employers and affected workers; timeliness and completeness of data entry into Ohio's designated case management system; use of funds in a manner that is consistent with the funding application and federal and state laws and local procedures; and other qualitative or quantitative evaluations that the local WDB deems appropriate.

VII. State Requirements

A. Oversight of Local Area LA Implementation

The Ohio Department of Job and Family Services (ODJFS), Office of Workforce Development (OWD), is the agency responsible for the administration of WIOA and the delivery of the RR program. The OWD RR unit oversees the RR program to ensure compliance with federal and state requirements, carrying out the delivery of LA primarily through sub-recipient awards to participating local areas.

To effectively manage the investment of RR resources and to oversee the delivery of LA services, the OWD RR Unit shall:

1. Manage RR funds to ensure sufficient resources remain available to respond to unavoidable mass layoffs and for other strategic priorities and for LA projects as appropriate;
2. Provide policy guidance and a planning form that local areas may submit to request LA funding;
3. Establish financial guidelines to be used in determining local area eligibility for an LA award and the award amount;
4. Review requests for RR funding to ensure compliance with this policy letter and related policies, regulations, and legislation;
5. Monitor LA project implementation by the local area (e.g., worker counts, expenditure rates, outcomes) by communicating with local areas and reviewing data reported in the applicable information systems; and
6. Negotiate and issue incremental awards and adjust the parameters and funding levels of LA projects that are in progress in response to communications with the local area and other data.

B. Technical Assistance

The RR Unit will provide technical assistance to local areas implementing LA projects under RR funding, including:

1. Documenting statewide RR activity and identifying best practices;
2. Overseeing the activities performed under RR-funded LA;
3. Providing support, guidance, and training to local areas participating in LA projects; and
4. Reviewing, managing, and reporting local area LA activity.

For additional information or to request technical assistance, email the OWD Rapid Response Unit at RAPDRESP@jfs.ohio.gov.

VIII. References

Workforce Innovation and Opportunity Act § 134, Pub. L. 113-128.

20 C.F.R. §§ 682.300-682.370.

USDOL, Training and Employment Guidance Letter WIOA No 19-16, Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and Wagner-Peyser Act Employment Service (ES), as amended by title III of WIOA, and for Implementation of the WIOA Final Rules (March 1, 2017).

ETA, Unemployment Insurance Program Letter No. 22-12, Financing of Temporary Federal Short-Time Compensation Programs under Section 2163 of the Middle-Class Tax Relief and Job Creation Act of 2012 (June 18, 2012).

O.A.C. §§ 5101:9-30-04

Ohio Revised. Code §§ 4141.09 and 4141.50.

ODJFS, Workforce Innovation and Opportunity Act Policy Letter No. 15-23.02, Incumbent Worker Training (IWT) Guidelines (June 14, 2023).

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