

Section 6

Rapid Response / Layoff Aversion

Overview

Introduction

Federal law requires states set aside not more than 25 percent (25%) of Workforce Innovation and Opportunity Act (WIOA) Dislocated Worker funding for two statewide activities:

1. Rapid Response to assist workers and businesses at risk of layoff or affected by layoff.
2. Additional Assistance for Local Boards to apply for if there is a significant increase in unemployment in their areas caused by plant closure, downsizing, natural disaster, or “other events.”

Federal law provides discretion to the Governor to develop specific policy. In California, current policy is to formula-allocate the Rapid Response funds (half of the total 25 percent funds) to Local Workforce Development Areas (Local Area).

This section provides information on the rapid response / layoff aversion strategies completed by the Business Service Unit (BSU).

References

This handbook chapter contains mandates and guidelines stated in:

- WIOA regulations, signed into law in 2014,
- Code of Federal Register (CFR) Title 20 Part V and Part VI, and
- State directives received from the Department of Labor (DOL) and/or Employment Development Department (EDD) as outlined in the table below.

DOL		EDD	
Training and Employment Guidance Letters (TEGL) or Training and Employment Notice (TEN):		Workforce Service Directives (WSD) and Workforce Services Information Notice (WSIN):	
• TEGL 03-15	• TEN 09-12 • TEN 31-11 • TEN 03-10 • TEN 23-06	• WSD 16-04 • WSD 15-19	• WSIN 15-21

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Rapid Response

Introduction	<p>Rapid Response encompasses the strategies and activities necessary to plan for and respond to announcements of a business closure, layoff, or mass job dislocations due to natural or other disasters, and to deliver services to enable dislocated workers to transition to new employment as quickly as possible.</p>
Purpose	<p>The purpose of Rapid Response is to enable affected workers to return to work as quickly as possible following a layoff, or to prevent layoffs. Rapid Response promotes economic recovery by responding to layoffs and dislocations, minimizing the impact on workers, businesses, and communities. Rapid Response focuses on the outcome and addresses flexibility, which allows Rapid Response to add value to the economy. The workforce development system:</p> <ul style="list-style-type: none">• Coordinates with business,• Must be comprehensive and proactive in communicating with business.• Provides labor market and workforce information,• Integrates industry requirements into training strategies and career pathways,• Brokers relationships and job connections,• Makes services efficient and easy to access, and• Works with regional partners to reduce duplication.
Indicators	<p>Early indicators of Rapid Response can be recognized in a variety of ways, including:</p> <ul style="list-style-type: none">• Through close communication with employer representatives,• Industry groups,• Organized labor,• Utilities, or• Through local media.
Strategies	<p>To successfully achieve the primary purpose, Rapid Response strategies require:</p> <ul style="list-style-type: none">• Provision of accurate, relevant information and direct reemployment services for workers.• Solutions for employers in transition, whether in growth or decline.• Establishing, convening, facilitating, and brokering connections, networks, and partnerships.• Strategic planning, data gathering, and analysis designed to anticipate, to prepare for, and to manage economic transition.
Tracking	<p>Rapid Response tracks the following:</p> <ul style="list-style-type: none">• Labor market trends,• Increased Unemployment Insurance claims,• Public announcements through the California Worker Adjustment and Retraining Notification (WARN) Act notices, and• Analyzes economic data to assess the health of businesses.

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Rapid Response, Continued

25% funding

Twenty-five percent (25%) of the state's WIOA Dislocated Worker funding is one-half for Rapid Response and one-half for additional assistance to dislocated workers.

Rapid Response funding

Will be allocated based on a three-part formula and layoff aversion component as follows:

- Baseline funding – allocated equally among Local Areas to ensure, at a minimum, that some capacity exists in each Local Area for the coordination and conduct of Rapid Response activities (\$50,000 per county in the LWDA).
- Layoff-based funding – is for Local Areas who serve regions where significant numbers of dislocation events occur. This allocation will be based on quantitative layoff data.
- Hold-Harmless – minimizes funding losses from year-to-year. A portion of the Rapid Response set-aside funds will be used to ensure no Local Area receives less than 75 percent of their prior-year share of statewide funds distributed for baseline and layoff-based activities.

Additional assistance funding

Funds are available to Local Workforce Development Areas (Local Areas) who experience sudden and large increases in unemployment due to natural disasters, mass layoffs, or other events. The funds are to provide direct services to dislocated workers when local resources are inadequate. An application must be submitted and there are three different methods for requesting AA funding: Standard Application, Emergency Application, and Project Modification Application.

Regional engagement

Business engagement should be built on regional partnerships among a range of organizations and intermediaries who can help identify and design appropriate business and employment solutions.

It is critical the BSU staff builds regional relationships with, but not limited to:

- Employers,
- Labor organizations,
- Workforce and economic development agencies,
- Training institutions,
- Service providers, and
- Community-based organizations (CBO).

The BSU can gain a competitive edge when staff can leverage accurate information about regional economic trends, labor markets, new business development, impending layoffs, regional assets, and education and training resources.

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Rapid Response, Continued

Rapid response activities

Rapid response activities include, but are not limited to the following:

1. Informational and direct re-employment services for workers, including but not limited to information and support for filing Reemployment Assistance (RA) benefits, information on the impacts of layoff on health coverage and other benefits, information on and referral to career services, re-employment-focused workshops and services, and training.
2. Delivery of solutions to address the needs of businesses to transition, provided across the business lifecycle (expansion and contraction), including comprehensive business engagement and layoff aversion strategies and activities designed to prevent or minimize the duration of unemployment.
3. Convening, brokering, and facilitating the connections, networks, and partners to ensure the ability to provide assistance to dislocated workers and their families with Supportive Services.
4. Strategic planning, data gathering, and analysis are designed to anticipate, prepare for, and manage economic change.
5. Layoff aversion activities.
6. Immediate contact with the employer, representatives of the affected workers, and the local community, including an assessment of and plans to address the:
 - Layoff plans and schedule of the employer,
 - Background and probable assistance need of the affected workers,
 - Re-employment prospects for workers, and
 - Available resources to meet the short and long-term assistance needs of the affected workers.
7. The provision of information and access to RA benefits and programs, AJCC system services, employment and training activities, including information on the WIOA Title I Dislocated Worker program, Pell Grants, the GI Bill, and other resources.
8. The delivery of other necessary services and resources including workshops, classes, and job fairs to support reemployment efforts for the affected workers.
9. Developing and maintaining partnerships with other appropriate Federal, State, and local agencies and officials, employer associations, industry business councils, labor organizations, and other public and private organizations, to:
 - Conduct strategic planning to develop strategies to address dislocation events and ensure timely access to a broad range of necessary services.
 - Develop mechanisms for gathering and exchanging information and data relating to potential dislocations, resources available, and the customization of layoff aversion or rapid response activities, to ensure the ability to provide rapid response services as quickly as possible.

Reports

Rapid Response Reports (121) are related to employer contacts in response to layoffs or closures. The report must be completed to report **all** employer layoff, closure planning, and orientation meetings. Planning meetings and/or orientations of nine or less employees are for information only and will not be used in the calculation of the dislocation-based formula funding factor.

Planning and Preparation

Introduction	The state identified 10 elements in the Rapid Response infrastructure. This section includes long—term objectives such as cultivating important relationships with a wide array of stakeholders, building, and maintaining an economic and market intelligence gathering network, and working closely with employers to promote Rapid Response.
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Ten elements	<p>The 10 elements in the planning and preparation are:</p> <ol style="list-style-type: none">1. Establishing a Rapid Response Infrastructure2. Building and maintaining relationships with stakeholders3. Developing policies and procedures4. Gathering intelligence5. Promoting the effectiveness of Rapid Response Services6. Assessing potential dislocations7. Collecting and analyzing Worker Survey Data8. Providing information, solutions, and services to employers, workers, and the community9. Connecting affected workers to the workforce system and America’s Job Center of California (AJCC)10. Providing services to employers
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Element 1	<p>Rapid Response systems manage economic transitions by working with key stakeholders to develop strategies and solutions for regional economic stability and growth. Rapid Response infrastructure should include early warning systems, which are necessary to ensure a timely response to worker dislocations.</p> <p>The state require to have a Rapid Response coordinator in place to serve as the primary contact for Rapid Response activities and to ensure processes are established and roles are defined. The coordinator works closely with a team of stakeholder representatives.</p> <p>An effective Rapid Response system must establish funding mechanisms that commit specific state and/or local funds to support at least the required Statewide Rapid Response Activities identified in 20 CFR 665.310.</p>
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Element 2	<p>It is critical Rapid Response teams build relationships with stakeholders and system partners such as:</p> <ul style="list-style-type: none">• Employers,• Labor organizations,• Workforce and Economic Development Agencies,• Training institutions,• Service providers, and• Communities. <p>Established relationships enable Rapid Response providers to effectively respond to employer and worker needs, gain intelligence on economic transitions, ensure ownership by all stakeholder groups and work together to develop solutions.</p>
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Planning and Preparation, Continued

Element 3	<p>The Rapid Response system provides effective, long-term solutions and is essential to establish policies/procedures, and contingency plans for atypical dislocations. Systems are most effective when the staff who administer and deliver Rapid Response services is guided by procedures that are clearly defined. However, it is also important policies/procedures allow and encourage flexibility. Rapid Response should embrace both a variety of dislocations as well as a forward-thinking, proactive vision to continually improve the system's effectiveness.</p>
Element 4	<p>Proactive Rapid Response systems rely on good intelligence. The value to economic development efforts can be increased by providing ready access to information regarding available talent. Leverage accurate information about national and regional economic trends, current and long-range labor market information, new business development and impending layoffs, regional assets, services, and education and training resources.</p> <p>Rapid Response providers can gather information from published data and information sources, but an active communication network should be integrated into a stakeholder network.</p>
Element 5	<p>One way to gain access to good information is to have successful and productive relationships with employers who invest in and operate in a Rapid Response team or community. Employers must be educated about his/her responsibilities to issue notifications of layoffs and closures. Pre-existing relationships can build the trust needed to share information and to create a dialogue with employers to encourage them to seek assistance before it is too late.</p>
Element 6	<p>A Rapid Response system assesses potential layoffs and develops an intervention plan prior to the dislocation event to ensure Rapid Response is timely, accessible, and comprehensive. As early as possible, Rapid Response staff should work together with employers, representatives of affected workers, including unions if applicable, as well as with the local community to anticipate potential dislocations and the impact on the community.</p>
Element 7	<p>Collecting data on workers affected by layoffs is to help inform his/her reemployment strategies. With a wide array of information on the demographics, skill sets, and training needs of the workforce, Rapid Response systems must be strategic in assessing what kinds of information are needed to structure service delivery.</p>
Element 8	<p>Rapid Response events are not only critical opportunities to collect worker information; but is a critical opportunity to convey information to both workers and employers. It is important Rapid Response focuses on how to deliver information, so it is heard, understood, and ultimately inspires action.</p>

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Planning and Preparation, Continued

Element 9	Once the initial information about worker benefits and opportunities is provided, Rapid Response providers can focus on connecting workers to the workforce system. The connection to the workforce system is best made during Rapid Response meetings so that the duration of unemployment is minimized and that dislocated workers receive the skills training needed for available jobs.
Element 10	Many employers recover, re-hire, or re-engineer their operations in a way that leads to new opportunities. There is a natural cycle in business, and employers should expect consistent customer services by the workforce system so they can engage at any time.

Layoff Aversion

Introductions	Layoff Aversion is defined as a process of using a series of activities, studies, and networks to examine a business or sector's cycle, organizational conditions, markets, and broad community relationships etc., to determine workforce and economic solutions that can mitigate job loss or save jobs.
Layoff aversion strategy	A layoff aversion strategy helps employers retain a skilled workforce and/or provides workers rapid transition to new employment, minimizing periods of unemployment. Layoff aversion is a central component of a high-performing business engagement strategy, requiring a shared responsibility among numerous partners at the state, regional, and local levels. Rapid Response does not stop layoffs.
Benefits of Layoff aversion	<p>The benefits to workers, employers, the workforce system, and communities when layoffs are averted are obvious and measurable. Some of these include:</p> <ul style="list-style-type: none">• For workers – retaining an existing job or quickly transitioning to a new one maintains financial stability and allows workers to continue to build experience with fewer gaps in employment.• For employers – retaining a known and reliable worker can save costs associated with severance, recruiting, training, and orienting a new employee, prevent increases to their unemployment tax rates, and mitigate intangible costs such as avoiding a plunge in post-layoff morale among remaining workers.• For states and local workforce areas – averting layoffs demonstrates critical value within a transitioning economy and provides support to economic development.• For communities – averting layoffs is far less disruptive and costly compared to providing food, health care, and other emergency services to financially strained residents, the loss of revenues from lower spending, and even the loss of property taxes associated with high home foreclosure rates that may result from dislocation.
Intent	<p>The intent of layoff aversion is to provide business solutions to companies who want to save jobs. To save jobs, The Business Service Representative (BSR) must be able to:</p> <ul style="list-style-type: none">• Identify an at-risk company well in advance of layoffs,• Obtain executive level commitment to work together,• Assess the needs of the company, and• Deliver solutions to address risk factors. <p>A layoff is averted when a:</p> <ol style="list-style-type: none">1. Worker's job is retained with the current employer that is at risk of downsizing or closing, or2. Worker at risk of dislocation transitions to a different job with the same employer.
Layoff aversion report	The Layoff Aversion Report (122) is specifically developed to capture and report business solution strategies delivered to business during any stage of the business cycle relating to and result in job retention and/or rapid re-employment.

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Layoff Aversion, Continued

Partners

The BSU should include a variety of partners that can help identify appropriate business and employment solutions, such as but not limited to:

- Department of Commerce's Trade Adjustment Assistance for Firms,
- The Manufacturing Extension Partnership (CA Manufacture),
- Other industry-sector based partnerships,
- Registered Apprenticeship,
- Educational Institutions,
- Private Outplacement/Staffing Firms,
- Public and Private Economic Development agencies,
- Chambers of Commerce,
- Small Business Development Centers,
- Community Based Organizations (CBO's),
- Faith-based Organizations (FBO's),
- Community colleges, and
- Local labor councils.

Rapid Response partnerships established across the economic spectrum can directly provide, or facilitate the provision of, an array of benefits to address the challenges presented by specific circumstances. Rapid Response partnerships can enhance valuable layoff aversion activities supported by other resources.

Activities

Business engagement activities such as customized training, incumbent worker training, and work sharing strategies are among the many WIOA funded strategies WDD can use to assist companies in averting layoffs.

Note: Refer to the Program Guide, Chapter 4 – Training for additional information about training activities.

Examples of Layoff aversion activities

Layoff aversion is often situation-dependent and potential options and successful outcomes depend on a variety of factors. The following are examples of possible layoff aversion activities.

- Creating and sustaining effective partnerships with a wide range of organizations that contribute to layoff aversion strategies.
 - Gathering data and intelligence related to economic transition trends within industries, communities, or at specific employers, and planning strategies for intervention.
 - Developing early warning networks and systems utilizing data and intelligence gathered.
 - Identifying heavily concentrated industries and sectors and related training needs in the geographic area.
 - Engaging in proactive measures such as business visitation or layoff forecasting programs to identify indicators of potential economic transition and training needs in growing industry sectors or expanding businesses.
 - Connecting employers and workers with short-term, on-the-job, and customized training and apprenticeships before or after layoff and prior to new employment.
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WARN

Introduction

In August of 1988, Congress passed the Worker Adjustment and Retraining Notification (WARN) Act to provide workers with sufficient time to prepare for the transition between the jobs he/she currently hold and new jobs.

WARN Act

The WARN Act requires employers to provide written notice at least 60 calendar days in advance of covered plant closings and mass layoffs. Employees who are not terminated on the same date, the date of the first individual termination within the statutory 30-day or 90-day period triggers the 60-day notice requirement. A worker's last day of employment is considered the date of that worker's layoff. The first and each subsequent group of terminees are entitled to a full 60 days' notice.

WARN Notification

Employers are required to provide WARN Notification when a business with 50 or more full-time workers (not counting workers who have less than 6 months on the job and workers who work fewer than 20 hours per week) is:

- Laying off at least one person at a single site of employment, or employs 50 or more workers who work at least a combined 4,000 hours per week, and
- A private for-profit business, private non-profit organization, or quasi-public entity separately organized from regular government.

WARN Notification assures that timely assistance can be provided to affected workers, their families, and communities through the Rapid Response Dislocated Worker program.

The advance notice allows workers and their families' transition time to seek alternative jobs or enter skills training programs. Upon receipt of a WARN notice, the Business Service Representative (BSR) coordinates with the employer to provide on-site information to the workers and employers about employment and retraining services designed to help participants find new jobs. These services may include, but not limited to:

- Labor market information (occupational information and economic trends)
- Job search and placement assistance
- On-the-job training
- Classroom training
- Entrepreneurial training
- Referral to basic and remedial education

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WARN, Continued

Affected Employees

Employees who may reasonably be expected to experience an employment loss may be hourly and/or salaried workers, managerial and supervisory employees, and non-strikers. If, at the time notice is required to be given, the employer cannot identify the employee who may reasonably be expected to experience an employment loss due to the elimination of a particular position, the employer must provide notice to the incumbent in that position.

Affected employees include:

- Employees who are terminated or laid off for more than 6 months or who have his/her hours reduced 50% or more in any 6-month period as a result of the plant closing or mass layoff.
- Employees who may reasonably be expected to experience an employment loss because of a proposed plant closing or mass layoff. If the employer has a seniority system that involves bumping rights, the employer should use its best efforts to give notice to the workers who will lose his/her jobs because of the system. If that is not possible, then an employer must give notice to the incumbent in the position being eliminated.
- Workers who are on temporary layoff but have a reasonable expectation of recall; this includes workers on workers' compensation, medical, maternity, or other leave.
- Part-time workers, these workers do not count when determining whether there has been a plant closing or mass layoff, but he/she is entitled to receive WARN notice if there is one.

Employees not protected by WARN

The following employees are not protected by the WARN Act if he/she is considered:

- Strikers or workers who have been locked out in a labor dispute.
- Workers working on temporary projects or facilities of the business who clearly understand the temporary nature of the work when hired.
- Business partners, consultants, or contract employees assigned to the business, but who have a separate employment relationship with another employer and are paid by that other employer, or who are self-employed.
- Regular federal, state, or local government employees.

Penalties

An employer who violates the **WARN** provisions by ordering a plant closing or mass layoff without providing appropriate notice is liable to each affected employee for an amount including back pay and benefits for the period of violation, up to 60 days.

The employer's liability may be reduced by such items as wages paid by the employer to the employee during the period of violation and voluntary and unconditional payments made by the employer to the employee.

An employer who fails to provide notice as required is subject to a civil penalty not to exceed \$500 for each day of violation. This penalty may be avoided if the employer satisfies the liability to each affected employee within three (3) weeks after the employer orders the closing or layoff.

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WARN, Continued

Notification period

The notification must be timed to reach the required parties at least 60 days prior to a closing or layoff. When the individual employment separations for a closing or layoff occur on more than one day, the notices are due to the representative(s), State dislocated worker unit and local government at least 60 days before the separation. If the workers are not represented, each worker's notice is due at least 60 days before that worker's separation.

An employer who provides less than 60 days advance notice of a closing or layoff and relies on one of the three exceptions, the employer bears the burden of proof that the conditions for the exception have been met. The employer also must give as much notice as is practical.

When notices are given, the employer must include a brief statement of the reason for reducing the notice period in addition to the items required in notices.

Notification exceptions

There are three (3) exceptions to the 60-day notice period which are:

- **Faltering company** – this exception, to be narrowly construed, covers situations where a company has sought new capital or business in order to stay open and where giving notice would ruin the opportunity to get the new capital or business, and applies only to plant closings.
 - **Unforeseeable business circumstances** – this exception applies to closings and layoffs that are caused by business circumstances that were not reasonably foreseeable at the time notice would otherwise have been required; and
 - **Natural disaster** – this applies where a closing or layoff is the direct result of a natural disaster, such as a flood, earthquake, drought or storm.
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Definitions and Resources

Introduction This section provides definitions and resources related to rapid response and layoff aversion.

Definitions The following are the definitions most commonly used in rapid response/layoff aversion:

Name	Description
Business Cycle	Identified as a sequence of four (4) phases: <ul style="list-style-type: none"> • Contraction – A slowdown in the pace of economic activity • Trough – The lower turning point of a business cycle, where a contraction turns into an expansion • Expansion – A speedup in the pace of economic activity • Peak – The upper turning of a business cycle
Customer Relationship Management Module (CRM)	<ul style="list-style-type: none"> • CRM is a CalJOBS based tool, supported by the Employment Development Department (EDD), • Allows WDD and their partners who have access to the CalJOBS system to record, track and report a variety of business engagement activities at the individual company level.
Economic Development	A program, group of policies, or activity that seeks to improve the economic well-being and quality of life for a community, by creating and/or retaining jobs that facilitate growth and provide a stable tax base.
Employer Contact	A visit to an employer by the BSU staff for the purposes of conducting Rapid Response activities. This visit may be in: <ul style="list-style-type: none"> • Person, • By telephone, or • Through the use of other interactive technology.
Employment Training Panel (ETP)	<ul style="list-style-type: none"> • ETP provides incumbent worker training (IWT) funding to employers to assist in upgrading the skills of his/her workers through training that leads to good paying, long-term jobs. • ETP is a funding agency, not a training agency.
Incumbent Worker	An employee of a business applying for Incumbent Worker Training (IWT) funds to up-skill and/or retrain in accordance with the Workforce Innovation and Opportunity Act (WIOA).
IWT	An IWT is developed with an employer or employer association to upgrade skills of a particular workforce. The employer agrees to retain the trained worker(s) upon completion of the training.
Jobs Retained	A layoff is averted when a: <ol style="list-style-type: none"> 1. Worker's job is retained with the current employer who is at risk of downsizing or closing, or 2. Worker at risk of dislocation transitions to a different job with the same employer.

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Definitions and Resources, Continued

Definitions, continued

Name	Description
Layoff Aversion	The process of using a series of activities, studies, and networks to examine a business or sector's cycle, organizational conditions, markets, and broad community relationships etc., in an effort to determine workforce and economic solutions that can mitigate job loss or save jobs.
Rapid Re-Employment (Talent Transfer)	<ul style="list-style-type: none">• A laid off worker is hired by a different employer and experiences short term unemployment (45 calendar days or less).• To qualify for this activity, a confirmed job offer must be on file from the hiring employer and issued within 45 days of the date the participant becomes unemployed.

References The following is a list of references provided by the state.

Name of Organization	Description
Manufacturing Extension Partnership (MEP)	The National Institute of Standards and Technology's Hollings MEP works with small and mid-sized U.S. manufacturers to help them create and retain jobs, increase profits, and save time and money.
Small Business Development Centers of California (SBDC)	The SBDCs provide training and no cost one-on-one counseling to help small businesses and entrepreneurs overcome obstacles to growth.
Work Sharing Program/Short Term Compensation	Work Sharing is described in Section 1279.5 of the California Unemployment Insurance Code and provides employers with an alternative to layoffs and provides their employees with the payment of reduced Unemployment Insurance benefits. Note: This activity is considered a job saved/retained as this strategy does minimize the impact on the Unemployment Insurance fund and should be reported on the Layoff Aversion Form 122.