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| EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210 | CLASSIFICATION TAA |
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 12-16

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
AFFILIATE AMERICAN JOB CENTER MANAGERS
COMPREHENSIVE AMERICAN JOB CENTER MANAGERS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS
TRADE ADJUSTMENT ASSISTANCE LEADS

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Questions and Answers on the Effects of Strikes and Lockouts on Eligibility for Trade Adjustment Assistance (TAA) and Trade Readjustment Allowance (TRA)

1. **Purpose.** To assist State Workforce Agencies (SWAs) or agencies designated by Governors as “Cooperating State Agencies” (CSAs) (also jointly referred to as “states”) in administering the TAA Program by providing guidance on the effects of strikes and lockouts on eligibility for TAA Program benefits, including TRA.

2. **References.**

- Chapter 2 of Title II of the Trade Act of 1974, as amended (Pub. L. 93-618) (1974 Act and, as amended, Trade Act);
- Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015), Title IV of the Trade Preferences Act of 2015, (P.L. No. 114-27);
- Federal Unemployment Tax Act (FUTA) Section 3304 (26 U.S.C. 3304 (2012));
- 20 Code of Federal Regulations (CFR) Part 617;
- Unemployment Insurance Program Letter (UIPL) No. 17-87 *Questions and Answers on the Effects of Strikes and Lockouts on Eligibility for Trade Readjustment Allowances* dated May 20, 1987.

3. **Background.** The Employment and Training Administration (ETA) is updating guidance on the effects of labor disputes on TAA Program benefits, and particularly the effects on TRA eligibility, after receiving a number of inquiries from states. While answers were provided in UIPL No. 17-87, this directive consolidates the questions asked, rescinds UIPL No. 17-87, and provides further guidance. This guidance includes a new statement that an individual

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| RESCISSIONS UIPL No. 17-87 | EXPIRATION DATE Continuing |
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experiencing a lockout can be an adversely affected worker who, if otherwise eligible, may be eligible to receive TAA benefits, including TRA.

The Trade Act of 1974 (Pub. L. No. 93-618), as amended (codified at 19 U.S.C. §§ 2271 *et seq.*), Title II, Chapter 2, established the Trade Adjustment Assistance for Workers (TAA), Alternative Trade Adjustment Assistance (ATAA), and Reemployment Trade Adjustment Assistance (RTAA) programs. These programs collectively referred to as the TAA Program, provide assistance to workers who have been adversely affected by foreign trade. The Trade Act was last amended by the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA 2015).

To obtain TAA Program reemployment services and benefits, a worker must first be part of a group of workers that is the subject of a petition filed with and certified by the U.S. Department of Labor. After a worker group certification is issued, each worker in the group must then individually apply for services and benefits through their local American Job Center (sometimes known locally as One-Stop Centers or by other names). The CSA will issue a determination of the workers' individual eligibility for TAA Program benefits.

4. Questions and Answers.

Sub-Section 1: Lockouts

- 1) Q. May a worker establish individual eligibility for TAA Program benefits based on a separation which is due to a lockout?

A. Yes. To qualify for TRA, or other TAA Program benefits, the Trade Act requires that a worker meet the definition of "adversely affected worker." Section 247(2) of the Trade Act (19 U.S.C. §2319 (2)) defines "adversely affected worker" as "an individual who, because of lack of work in adversely affected employment, has been totally or partially separated from such employment." A "total separation" is defined in Section 247(10) (19 U.S.C. § 2319 (10)) as "the layoff or severance of an individual from employment with a firm in which adversely affected employment exists." The regulations, at 20 CFR 617.3(z), define a layoff as "a suspension of or separation from employment by a firm for lack of work, initiated by the employer, and expected to be for a definite or indefinite period of not less than seven consecutive days."

The Department has determined that a separation due to a lockout, where the lockout is expected to be for a definite or indefinite period of not less than seven consecutive days, is a qualifying separation for TAA purposes and a worker may establish TAA Program benefit eligibility based on such separation. Whether the worker was separated due to the lockout or for another reason must be determined for each individual by the state.

- 2) Q. If state law allows Unemployment Insurance (UI) benefits to be paid to a worker who is locked out, can the worker be eligible to receive TRA?

A. Yes, TRA may be paid to a worker who is locked out if all other TRA eligibility requirements, including the UI eligibility and the wage qualifying requirements, are met.

Sub-Section 2: Strikes

- 1) Q. May a worker establish individual eligibility for TAA Program benefits based on a separation which is due to a strike?

A. No. The Trade Act requires that a worker have a lack of work separation from adversely affected employment to qualify for TRA, or other TAA Program benefits. Since a separation due to a strike was not initiated by the employer, it is not a lack of work separation under the Trade Act, and, a worker may not establish individual TAA Program eligibility based on such a strike.

- 2) Q. If a worker who was on strike for fewer than 26 weeks returns to work after the dispute has ended, and is told by the employer that there is no longer any work for him or her, can he or she establish individual TAA Program eligibility?

A. Yes. This separation is due to lack of work and not a strike. However, all other requirements, including the requirement to have 26 or more weeks in adversely affected employment with wages of \$30 or more (including qualifying weeks of leave or other work absences listed in Trade Act section 231(a)(2)) (19 U.S.C. §2291(a)(2)) within the 52 week period ending with the week of separation, must also be met with respect to the separation.

- 3) Q. If a worker who was on strike for more than 26 weeks returns to work, and is then laid off within two weeks because of lack of work, can he or she meet the wage qualifying requirements to receive TRA?

A. No. In all cases, the worker must have 26 or more weeks in adversely affected employment with wages of \$30 or more (including qualifying weeks of leave or other work absences listed in Trade Act section 231(a)(2)) (19 U.S.C. §2291(a)(2)) within the 52 week period ending with the week of separation to meet the qualifying requirements of Section 231(a)(2) of the Trade Act (19 U.S.C. §2291(a)(2)). Since the strike was for more than 26 weeks, it will not be possible for the worker to meet that requirement.

- 4) Q. If a worker who is out of work because of a strike decides to enter training, may the training be approved for TAA purposes?

A. Training may be approved under the Trade Act only if there is a lack of work separation to establish eligibility, which, as noted above, cannot be established by a strike. However, if the worker had established individual eligibility for TAA Program benefits before the strike through a previous qualifying separation, he or she may be approved for TAA training if the requirements of Section 236(a) of

the Trade Act (19 U.S.C. §2296(a)) and 20 CFR 617.22 are met. Additionally, eligibility for basic or additional weeks of TRA may be available if all requirements for receipt set forth in Trade Act section 231(a) (19 U.S.C. § 2291(a)) are met and state law allows payment of UI during a strike.

- 5) Q. Is a worker, who was on leave at the time a strike occurred, individually eligible for TAA Program benefits if he or she does not return to work because of the strike?

A. No. There is no lack of work separation to establish eligibility.

- 6) Q. Where a worker receives a notice of layoff after the settlement of a strike in which he/she participated, what is the date of separation for purposes of the worker's eligibility for TRA?

A. The date of separation is the effective date of the notice for TRA purposes. A worker on strike remains in employment status and is not separated from employment until an actual separating action is taken by the employer. Whether a separating action taken by an employer is a layoff for lack of work for TAA purposes is a fact to be determined in each case, and this finding is necessary to establish that the worker is an adversely affected worker.

- 7) Q. Would an individual who was receiving TRA while in TAA approved training be disqualified from receiving further TRA payments if, while a strike was in progress, the individual was offered and refused employment in an establishment where jobs are vacant because of the strike?

A. No. The individual could not be denied TRA by a state on these facts without violating the labor standards in Section 3304(a)(5)(A) of the Federal Unemployment Tax Act (FUTA). This section requires that compensation not be denied to an otherwise eligible individual for refusing to accept new work if the position offered is vacant due directly to a strike, lockout, or other labor dispute. Denial of TRA in this situation would also be inconsistent with Section 3304(a)(8) of the FUTA (prohibiting denial of benefits based upon lack of availability for work while the individual is in training approved by the State) and Section 236(d)(2) of the Trade Act (19 U.S.C. §2296(d)(2)) (prohibiting denial of benefits "because of the application to any such week in training of the provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work") and 20 CFR § 617.18(b)(1).

- 8) Q. If a plant is permanently closed down immediately following the settlement of a strike, what is the date of separation for those workers who participated in the strike?

A. The date of separation is the effective date of the notice the employer provided to the claimant that work is not available or the effective date of the plant closure.

- 9) Q. May a worker who is not participating in a strike qualify for individual TAA Program benefits if the worker is laid off because his/her employer supplies a firm involved in the strike?

A. If the worker group of which he or she is a member has been certified as eligible to apply for TAA Program benefits, then a worker who is laid off because the firm for which his or her employer supplied workers no longer needs the workers due to a strike may experience a lack of work separation for which he or she could qualify for TAA Program benefits.

5. **Action Requested.** States are requested to review the above information and disseminate this guidance to appropriate staff. This guidance must be followed in future determinations. In addition, any pending determinations, including those determinations that are under review or appeal at any stage of the administrative or judicial process, that are impacted by this guidance must be remanded for reconsideration in accordance with this guidance, if permissible under state law.
6. **Inquiries.** States should direct all inquiries to the appropriate ETA Regional Office.