

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



July 26, 2000

ALL-COUNTY INFORMATION NOTICE NO. I-74-00

TO: ALL COUNTY WELFARE DIRECTORS
 ALL COUNTY WELFARE-TO-WORK
 COORDINATORS
 ALL CalWORKs PROGRAM SPECIALISTS

SUBJECT: NONDISPLACEMENT REQUIREMENTS

REASON FOR THIS TRANSMITTAL

- State Law Change
 Federal Law or Regulation Change
 Court Order or Settlement Agreement
 Clarification Requested by One or More Counties
 Initiated by CDSS

REFERENCE: MANUAL OF POLICIES AND PROCEDURES SECTION 42-720

This letter is to remind county welfare departments (CWDs) of the nondisplacement regulations in Manual of Policies and Procedures (MPP) Section 42-720 (see attached) pertaining to the assignment of California Work Opportunity and Responsibility to Kids (CalWORKs) recipients to education, employment, or training slots.

The regulations on nondisplacement are intended to protect regular employees, and workers performing contracted services, from being displaced by CalWORKs participants who are assigned to welfare-to-work activities. These regulations also require counties to establish a grievance process for regular employees, or their representatives, who believe that the placement of a CalWORKs recipient into community service, work experience, on-the-job training (OJT), or grant-based OJT is in violation of MPP Section 42-720.

Staff from the CWDs or their contractors that are responsible for developing placements and/or assigning CalWORKs recipients to welfare-to-work activities should be familiar with the nondisplacement requirements under CalWORKs. If you have any questions regarding MPP Section 42-720, please contact Randy Shiroi of the Employment Bureau, at (916) 654-1527.

Sincerely,

Original Document Signed By
Suzanne Nobles for Charr Lee Metsker on 7/26/00

CHARR LEE METSKER, Chief
 Employment and Eligibility Branch

Attachment

42-720 NONDISPLACEMENT PROTECTION IN WORK ACTIVITIES 42-720

.1 Displacement Provisions

Except as specified in Section 42-720.3, an education, employment, or training program position specified in Sections 42-716.111(a) through (l), or under any county pilot project, may not be created as a result of, or may not result in, any of the following:

- .11 Displacement or partial displacement of current employees including, but not limited to, a reduction in hours of nonovertime and overtime work, wages, or employment benefits.
 - .12 The filling of positions that would be promotional opportunities for current employees, unless such promotions are routinely filled through an open process in which recipients are provided an opportunity to compete for the job.
 - .13 The filling of a position prior to compliance with applicable personnel procedures or provisions of collective bargaining agreements.
 - .14 The filling of established unfilled public agency positions, unless the positions are unfunded in a public agency budget.
 - .15 The filling of a position created by termination, layoff, or reduction in work force, caused by the employer's intent to fill the position with a subsidized position.
 - .16 A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers.
 - .17 The filling of a work assignment customarily performed by a worker in a job classification covered by a collective bargaining agreement in that specific worksite, or the filling of a work assignment in any bargaining unit in which funded positions are vacant or in which regular employees are on layoff.
 - .18 The termination of a contract for services, before its expiration date, that displaces or partially displaces workers performing contracted services and which is caused by the employer's intent to fill the vacancy with a subsidized welfare-to-work participant.
 - .19 The denial to a participant or employee of protections provided other workers on the worksite under state and federal workplace health, safety, and representation laws.
- .2 Sections 42-720.12, 42-720.14, and 42-720.17 shall not apply to unsubsidized employment placements.

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(Continued)

.3 Notification of labor unions and non-union employees of the use of CalWORKs recipients.

.31 The CWD shall notify or ensure that an employment or training provider notifies:

.311 The appropriate labor union of the use of a CalWORKs recipient assigned to a welfare-to-work employment or training activity described in Section 42-716.111 or any position created under a county pilot project, in any location or work activity controlled by an employer and covered by a collective bargaining agreement between the employer and a union; or

.312 Non-union employees of the use of CalWORKs welfare-to-work participants and the availability of the grievance process described in Section 42-720.4.

(a) Display of a poster shall satisfy this requirement.

(1) The poster required by Section 42-720.312(a) shall not identify any welfare-to-work participant.

.4 Employee Displacement Grievance Process

The following grievance process shall be used to resolve the complaints of regular employees or their representatives who believe assignment of a welfare-to-work participant to community service, work experience, on-the-job training (OJT), or any activity funded by grant-based OJT training violates any of the displacement provisions contained in Section 42-720.1, as applicable. All displacement complaints shall be in written form and shall include the full name, address (if any), and telephone number (if any) of the alleged displaced employee, the full name and address of the employer against whom the complaint is being filed, a clear and concise statement of the facts concerning the alleged displacement, including pertinent dates, and a statement that the complaint has been signed under penalty of perjury.

.41 Informal Resolution

.411 Upon receipt of a written complaint by the employee or employee's representative, the CWD shall contact both the complainant and affected employer and attempt to informally resolve the complaint.

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- .412 The period for informal resolution shall begin on the date the complaint is received by the CWD and shall not exceed ten calendar days.
- (a) Nothing in this section shall prohibit informal resolution of the complaint at any time during the displacement grievance process.
- .413 Following its efforts to informally resolve the complaint, the CWD shall send a letter informing the complainant of the following:
- (a) The employer's response to the complaint, including any actions the employer is willing to take toward informal resolution.
- (b) The right to request a formal hearing as specified in Section 42-720.421 if the complainant is dissatisfied with the employer's informal response.
- (c) The procedures for filing a formal hearing including the address to which a request for hearing should be sent.
- (d) The time limit for filing a request for formal hearing as specified in Section 42-720.421(a).
- .414 The CWD shall send the letter required by Section 42-720.413 no later than the twentieth calendar day from the date the complaint was received by the CWD.
- (a) Copies of the letter shall be sent to the affected employer.
- .42 Formal Hearing
- .421 If the complaint cannot be informally resolved, the complainant may request a formal hearing.
- (a) A written request for formal hearing must be filed no later than ten calendar days following the employee's receipt of the letter required by Section 42-720.413.
- (1) The date postmarked on the hearing request shall be considered the date of its filing.

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(Continued)

- .422 Formal hearings shall be conducted by the California Department of Social Services (CDSS), State Hearings Division.

- .423 The CDSS, **State Hearings Division** shall inform the complainant, the CWD, and affected employer in writing of the date, time and location of the hearing and of the opportunity to present evidence, bring witnesses, cross-examine witnesses, and bring or send an authorized representative.
 - (a) An authorized representative is defined as an individual or organization that has been authorized by the complainant or affected employer to act on behalf of the complainant or affected employer in any and all aspects of the formal hearing. An authorized representative may include legal counsel, a relative, friend, or other spokesperson.

 - (b) Upon the request of any party to the complaint, a hearing may be postponed prior to the hearing or at the hearing, if such request or postponement is for good cause. The Department shall have the authority to request verification to support the request for postponement. Notwithstanding the provisions of this section the time limits contained in Section 42-720.425 shall apply. The criteria for good cause includes, but is not limited to, the following:
 - (1) Death in the family.
 - (2) Personal illness or injury.
 - (3) Sudden and unexpected emergencies which prevent the complainant or the employer or their respective authorized representatives from appearing.
 - (4) A conflicting court appearance which can not be postponed.

 - (c) A party who wishes to submit a document into evidence must provide a copy of it, free of charge, to the other party.

 - (d) The Administrative Law Judge may not discuss the merits of a pending state hearing with one party outside the presence of the other party.

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- .424 Except as specified in this section, the following provisions of MPP, Division 22 shall apply to formal hearings:
- (a) Except as specified below, Section 22-049 relating to general rules and procedures at the hearing.
 - (1) Notwithstanding the provisions of Section 22-049.1, both the complainant and affected employer may bring or send an authorized representative.
 - (2) To the extent that Section 22-049.11 refers to rehearings, it shall not apply.
 - (3) Sections 22-049.52 and 22-049.532, and any references to Section 22-049.532, shall not apply.
 - (4) Sections 22-049.8 and 22-049.9 shall not apply.
 - (5) To the extent the provisions of Section 22-049 apply to formal hearings, all references to "claimant" and "county" shall be deemed to refer to "complainant" and "affected employer," respectively.
 - (b) Section 22-050 relating to evidence.
 - (1) Requirements at Section 22-050.21 shall not apply.
 - (c) Section 22-053.2 relating to postponements and continuances for additional evidence.
 - (1) Notwithstanding the time parameters identified in Section 22-053.2, the time limit set forth in Section 42-720.425 shall apply.
 - (d) Sections 22-061.1, .3, and .4 relating to submission and adoption of proposed decisions.
 - (e) Section 22-062 relating to action by the Director.

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(Continued)

- (1) Notwithstanding the time limits for director action specified in Section 22-062.2, requirements for issuance of a hearing decision at Section 42-720.425 shall apply.

- .425 A written hearing decision shall be issued within 90 calendar days of the date the complaint was received by the CDSS State Hearings Division.

- .426 Copies of the written decision shall be sent to all affected parties. The decision shall include:
 - (a) A statement identifying the right to federal appeal of the hearing decision as specified in Section 42-720.5.

- .427 When a hearing decision upholds the displacement complaint, the decision shall:
 - (a) Require termination of the assignment which brought about the complaint and any other assignments which have caused the displacement of regular employees.
 - (b) Identify those actions which shall be taken to remedy the displacement in accordance with Section 42-720.6.

- .5 Remedies
 - .51 Remedies for displaced employees shall include reinstatement, back pay, and/or back benefits from the affected employer.

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(Continued)

.6 Union Grievance

- .61** Any grievance procedure that is part of a collective bargaining agreement between the employer and labor union representing the dissatisfied employee shall be used in lieu of the process described in Section 42-720.42.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 11324.5, 11324.6, and 11324.7, Welfare and Institutions Code.

42-721 NONCOMPLIANCE WITH PROGRAM REQUIREMENTS **42-721**

.1 The provisions of Sections 42-721.2, .3, and .4 shall not apply to:

- .11** Teen parents who are subject to the Cal-Learn Program as described in Sections 42-762 through 42-769.
- .12** Any person who is not required, but who volunteers, to participate in the Welfare-to-Work Program and who fails to appear for a scheduled appointment prior to entering into the welfare-to-work plan.

.2 Compliance Process

- .21** An individual who is required to participate in program activities as a condition of receipt of aid shall be subject to sanctions specified in Section 42-721.4, whenever:
 - .211** He or she fails or refuses without good cause to comply with program requirements; and
 - .212** He or she subsequently fails or refuses without good cause to:
 - (a)** agree to a compliance plan; or
 - (b)** comply with a compliance plan agreed to by the CWD and the participant.