

Department of Human Resources
311 West Saratoga Street
Baltimore MD 21201

FIA ACTION TRANSMITTAL

Control Number: FIA/OPR 98-26

Effective Date: Upon Request

Issuance Date: December 30, 1997

**TO: DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES
DEPUTY/ASSISTANT DIRECTORS FOR FAMILY INVESTMENT**

FROM: KEVIN MAHON, EXECUTIVE DIRECTOR, FIA

**RE: DEFINITION OF DISPLACEMENT AND LOCAL GRIEVANCE
PROCEDURE**

PROGRAM AFFECTED: TEMPORARY CASH ASSISTANCE (TCA) PROGRAM

**ORIGINATING OFFICE: OFFICE OF WORK OPPORTUNITIES (OWO) AND
OFFICE OF POLICY AND RESEARCH (OPR)**

SUMMARY:

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 prohibits states from placing a Temporary Cash Assistance (TCA) customer in a work activity with an employer who has laid off or terminated a regular employee in order to fill the vacancy with the TCA customer.

In June 1997, the Governor of Maryland issued Executive Order numbered 01.01.1997.03 (see attached) which provides a more expansive definition of displacement. Displacement, as defined in the Executive Order, means employing or assigning a "subsidized participant" when:

- (a) The employer has terminated the employment of an employee, or the employee's current position, or otherwise caused an involuntary reduction in its work force;
- (b) An individual is hired while any other person is on layoff, including seasonal layoff, from the same or substantially equivalent position;
- (c) The employer has reduced the hours of any employee in the same or substantially equivalent position to less than full time; or,

(d) Such employment or assignment results in the impairment of an existing contract for services.

Note: A subsidized participant is an adult in a family receiving Temporary Cash Assistance under the Family Investment Program who is engaged in a work activity that meets the definition of Subsidized Private Sector Employment, Subsidized Public Sector Employment, Work Experience, On-the-Job Training, or Community Service. (see Action Transmittal Number 97-67)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required states to **establish and maintain a grievance procedure** for resolving complaints that allege displacement. The Executive Order defines this requirement for Maryland by specifying a procedure that involves Local Departments of Social Services (LDSS), a State Welfare Displacement Review Panel, and the Office of Administrative Hearings.

ACTION TO BE TAKEN:

In accordance with the Governor's Executive Order, local departments of social services (LDSS) must immediately develop a process for hearing complaints from the general public that allege displacement. **This process must be detailed in writing and submitted to the Office of Work Opportunities no later than January 31, 1998. If you would like to receive a copy of these guidelines on disk, please contact Yolanda Parker on (410) 767-7259 or Renita Young on (410) 767-7708. The local office grievance process must meet the following guidelines:**

- 1) The Local Department of Social Services (LDSS) must provide information about their grievance procedure to anyone who inquires, upon request. When providing information, the LDSS must include the name of the person to whom the complaint should be addressed.
- 2) The complainant shall initiate the grievance procedure by presenting his/her complaint of displacement in writing to the local department of social services within 30 calendar days after the alleged cause of the complaint or 30 calendar days after the complainant became aware of the alleged cause of the complaint. A sample complaint form that could be given to complainants to complete is attached for your consideration.
- 3) The LDSS shall immediately contact any employer alleged in a complaint to have caused displacement.
- 4) The LDSS shall schedule a conference with the complainant, or with the employer and the complainant, within 10 calendar days after receipt of the written complaint. The local department shall determine, within 15 calendar days of this initial conference, whether displacement occurred and send written notice of the decision to both parties. The LDSS notice shall state that if either the complainant or the employer disagrees with the

department's decision, they have a right to request a conference before the Welfare Displacement Review Panel.

- 5) If either the complainant or the employer wants a conference before the Welfare Displacement Review Panel, the complainant or employer must submit the request to the Family Investment Administration within 15 days after the date of the LDSS's decision. If a request is received, FIA will notify the local department. The local department then shall forward to FIA for the consideration of the Review Panel, a copy of its written decision on the complaint, as well as all other pertinent information.

The Welfare Displacement Review Panel shall hold a conference within 30 calendar days of the date on which the Family Investment Administration received the conference request. A written decision from the Panel must be issued within 30 days after the conference. If the complainant or employer is dissatisfied with the Panel's decision, he/she can appeal the decision to the Office of Administrative Hearings (OAH).

The Office of Administration Hearings (OAH) shall conduct a hearing. Notice of the hearing shall be sent to the parties at least 15 days before the hearing and shall advise the employee and the employer of the right to be represented by a lawyer or other person at the hearing. Both parties may examine the LDSS's record for the purpose of discovering information pertinent to the appeal, provided that information the LDSS must keep confidential, remains confidential.

Hearings are open to the public. The burden of proof is on the employee. The Administrative Law Judge shall determine whether displacement occurred and issue the final administrative decision within 90 days of the date of the request for the hearing. A decision will then be sent to the employee, the employer and the LDSS.

The decision of the Administrative Law Judge is binding on the LDSS and subject to review by the circuit court. Upon final finding of displacement in the grievance process, the local department may end the subsidy in the case of subsidized employment and remove the participant from work experience, on-the-job training, or community service.

ACTION REQUIRED OF: All Local Departments of Social Services

ACTION DUE DATE: Upon Receipt

INQUIRIES:

Direct inquiries to Jewru Bandeh, Director of the Office of Work Opportunities at (410) 767-7993.

cc:	Alvin C. Collins	FIA Management
	Lynda Fox	Help Desk
	Susan Fernandez	Constiuent Services
	Jewru Bandeh	DHR Executive Staff
	Rich Larson	CTF
	Rosemary Malone	

MARYLAND
DEPARTMENT OF HUMAN RESOURCES
DISPLACEMENT COMPLAINT (FILING) FORM

FROM: _____ TO: _____
(Name of Complainant) (Local Department of Social Services)
Address: Address:
Phone: Contact Person:
Complainant's Job Title/Position: Phone:
How Long in Job/Position:

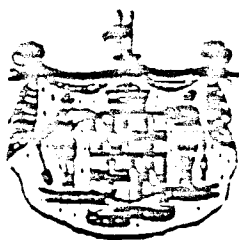
Employer Name:
Address:
Phone:

NATURE OF COMPLAINT/ALLEGATION:

Complainant's Signature / Date

LDSS FINDINGS :

LDSS Representative's Signature / Date



The State of Maryland
Executive Department

EXECUTIVE ORDER

01.01.1997.03

Preventing Displacement of Workers by the Family Investment Program

- WHEREAS, The purpose of the Family Investment Program is to promote economic independence;
- WHEREAS, The Family Investment Program was not intended to displace hard working Marylanders;
- WHEREAS, Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, the State must place Temporary Cash Assistance recipients in work activities within 24 months of first receiving assistance and may provide no more than 60 months of assistance over an individual's lifetime;
- WHEREAS, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Welfare Innovation Act of 1997, Chapter 593 of the 1997 Laws of Maryland, include specific prohibitions on displacing employees with Temporary Cash Assistance recipients;
- WHEREAS, Section 5 of the Welfare Innovation Act of 1997 states "That it is the intent of the General Assembly that the Department of Human Resources make every effort to ensure that adult Family Investment Program recipients engaged in work activities under the Family Investment Program established under Article 88A of the Code not be employed or assigned to jobs: (1) that displace or partially displace current employees or positions; (2) that replace individuals who are laid off from the same or any substantially equivalent job; or (3) where an employer has terminated the employment of a regular employee, or otherwise caused an involuntary reduction of its work force in order to fill the vacancy so created with an adult Family Investment Program recipient";
- WHEREAS, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires that Maryland establish a grievance procedure for resolving complaints of alleged prohibited displacement and Section 6 of the Welfare Innovation Act of 1997 requires that this grievance procedure include an opportunity for a hearing before the Office of Administrative Hearings; and

WHEREAS,

It is desirable to clarify the definition of displacement in order to protect working Marylanders and to establish a full and fair grievance procedure for working Marylanders that includes input from the community.

NOW, THEREFORE,

I, PARRIS N. GLENDENING, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING ORDER, EFFECTIVE IMMEDIATELY:

A. Definitions.

(1) In this Executive Order the following words have the meanings indicated.

(2) "Displacement" means employing or assigning a subsidized participant when:

(a) The employer has terminated the employment of an employee, or the employee's current position, or otherwise caused an involuntary reduction in its work force;

(b) An individual is hired while any other person is on layoff, including seasonal layoff, from the same or substantially equivalent position;

(c) The employer has reduced the hours of any employee in the same or substantially equivalent position to less than full time; or

(d) Such employment or assignment results in the impairment of an existing contract for services.

(3) "Employer" means a person or governmental entity which employs at least one individual within the State.

(4) "Subsidized employment" means employment in the public or private sector which is supported in part by federal or State funds for a limited time. Employment for which an employer receives a tax credit is not subsidized employment.

(5) "Subsidized participant" means an adult in a family receiving Temporary Cash Assistance under the Family Investment Program who is engaged in subsidized employment or work experience.

(6) "Unsubsidized employment" means employment in the public or private sector which is not supported by federal or State Family Investment Program funds. Unsubsidized employment is an arrangement solely between the employer and the employee.

(7) "Work experience" means time-limited preparation for employment in a public or private work setting. Work experience participants are not employees and remain recipients of Temporary Cash Assistance, Medical Assistance and, in many cases, Food Stamps. Work experience participants may also receive an expense allowance but do not receive wages.

B. Prohibition on Displacement.

(1) The Department of Human Resources shall conduct the Family Investment Program in such a manner that employees in the State of Maryland are not subject to displacement.

(2) This Executive Order shall not be construed to limit an employer's right to claim a tax credit under Maryland Annotated Code Art. 88A, § 54, for wages paid for unsubsidized employment to a qualified employment opportunity employee.

C. Grievance Procedure.

(1) The Department of Human Resources shall establish by regulation a grievance procedure for resolving complaints by an employee who has a claim of displacement. The parties to this grievance procedure are the grievant and the employer. This procedure shall afford an opportunity for full participation by the parties.

(2) A complaint shall be filed with the local department of social services within 30 days after either the alleged cause of the complaint or the date the grievant should have known of the alleged cause of the complaint.

(3) Within 10 calendar days of receiving a complaint, the local department of social services shall schedule a conference with the grievant. The grievant shall present information to support the grievant's complaint. The local department may also contact and hold an additional conference with the employer. Within 15 days of the initial conference with the grievant, the local department shall issue a written decision to the parties.

(4) There is a Welfare Displacement Review Panel. The Welfare Displacement Review Panel consists of:

(a) Two representatives from the Department of Human Resources;

(b) One representative from the Department of Labor, Licensing and Regulation; and

(c) Two public representatives appointed by the Secretary of Human Resources.

(5) Any party which does not agree with the local department decision may request a conference before the Welfare Displacement Review Panel.

(6) The Welfare Displacement Review Panel shall:

(a) Hold a conference within 30 days of receipt of the request, unless the parties agree to an extension; and

(b) Within 30 days of the conference, issue a written decision to the parties.

(7) Any party which does not agree with the Welfare Displacement Review Panel decision may request a fair hearing before the Office of Administrative Hearings in the same manner that a recipient would request a fair hearing under COMAR 07.03.11.

(8) The Office of Administrative Hearings hearing shall be on the record, and shall be conducted in accordance with the Administrative Procedure Act, COMAR 28.02.01 and the regulations of the Department of Human Resources. The Office of Administrative Hearings shall issue a final decision which may be appealed to the circuit court pursuant to the Administrative Procedure Act.

(9) If displacement is found at the final level in the grievance process, the local department may provide for the following remedies:

(a) Removing the subsidy in the case of subsidized employment; or

(b) Removing the subsidized participant from a work experience placement.

(10) Nothing in this Executive Order shall be construed to limit the ability or right of any individual or his or her representative from pursuing available procedures and remedies under any applicable collective bargaining agreement or any other law.

D. Commission on Inadvertent Displacement.

(1) There shall be a Commission on Inadvertent Displacement.

(2) Membership.

(a) The Commission consists of the following members or their designees:

- (i) The Secretary of Human Resources;
- (ii) The Secretary of Labor, Licensing and Regulation;
- (iii) One member of the Senate appointed by the President of the Senate;
- (iv) One member of the House of Delegates appointed by the Speaker of the House;
- (v) One member of the Governor's staff appointed by the Governor;
- (vi) One member of the public appointed by the Governor to represent employees who may be at risk of inadvertent displacement; and
- (vii) One member of the public appointed by the Governor to represent employers who participate in the Family Investment Program.

(b) The Governor shall appoint the chairperson from among the members of the Commission.

(c) The members of the Commission may not receive compensation for their services. Members may be reimbursed for their reasonable expenses incurred in the performance of their duties in accordance with the standard travel regulations as provided in the State budget.

(d) The Department of Human Resources shall provide staff support and technical assistance to the Commission.

(3) Duties of the Commission. The Commission on Inadvertent Displacement shall:

- (a) Examine the issue of inadvertent displacement of employees and positions which could potentially result from the operation of the Family Investment Program;
- (b) Evaluate the extent to which inadvertent displacement occurs and the factors which affect the likelihood that it will occur; and
- (c) Review and recommend options to address any concerns or problems brought to light by the examination of the Commission.

(4) The Commission shall submit a final report to the Governor on or before December 31, 1997.

E. Implementation:

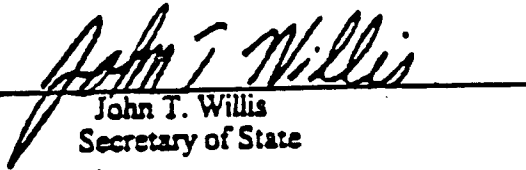
The Department of Human Resources shall promulgate any and all regulations necessary to implement sections 5 and 6 of the Welfare Innovation Act of 1997.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 30th Day of June, 1997.



Parris N. Glendening
Governor

ATTEST:



John T. Willis
Secretary of State