



Andrew Cuomo, Governor

Peter M. Rivera, Commissioner

**NEW YORK STATE
WORKFORCE DEVELOPMENT SYSTEM
TECHNICAL ADVISORY #14-7**

DATE JULY 8, 2014

To: Workforce Development Community

Subject: Impact of the U. S. Supreme Court's Decision in *United States v. Windsor* on Programs Operated Under Title IB of the Workforce Investment Act (WIA) and the Trade Adjustment Assistance (TAA) Program.

Rescinds and replaces Workforce Development System Technical Advisory #08-9, Impact of the Martinez v. County of Monroe Decision on Programs Operated Under Title IB of the Workforce Investment Act.

PURPOSE

The purpose of this Workforce Development System Technical Advisory (WDS-TA) is to advise Local Workforce Investment Boards (LWIBs) and Career Center staff on the implications of the *Windsor* decision on workforce programs.

ACTION

LWIBs should ensure all Career Center staff are aware of the policy and are including same-sex spouses in the definition of family for WIA and TAA programs.

POLICY

In 2008, as a result of a State court decision under *Martinez v. County of Monroe*, the New York State Department of Labor (NYSDOL) had already determined that lawful same-gender marriages must be included in the definitions of family under WIA. This determination was communicated in Technical Advisory #08-9, *Impact of the Martinez v. County of Monroe Decision on Programs Operated Under Title IB of the Workforce Investment Act*.

As a result of the *Windsor* Supreme Court decision, the United States Department of Labor Employment and Training Administration (ETA) now recognizes lawful same-sex marriages under all its workforce grant programs, including WIA and TAA. ETA is encouraging all state workforce agencies and cooperating state agencies to change their policies accordingly.

NYSDOL will continue to recognize same-sex marriages that are legally recognized in the jurisdiction where they took place as equally recognized in New York State. "Jurisdiction" includes any state, Indian tribe, the District of Columbia, or any other territory or possession of the United States or any foreign country that has the legal authority to sanction same-sex marriages. For a current list of states that allow same-sex marriage, please visit the following website:

<http://answers.usa.gov/system/templates/selfservice/USAGov/#!portal/1012/article/4109/Same-SexMarriage-Laws>.

PROCEDURES

Impact on WIA

Same-sex spouses who were married in a jurisdiction that legally recognizes such marriages are to be considered a family for purposes of WIA eligibility. Following is a review of certain provisions in the WIA statute where the definition of “family” is relevant.

- WIA §101(15) provides the definition of family as “two or more persons related by blood, marriage or decree of court” which includes a husband and wife and dependent children.
- WIA §101(25) defines “low-income individual” which includes the amount of family income as a factor in making the determination of low-income. WIA §101(13) requires eligible youth to be “low-income” unless enrolled under the 5 percent exemption. The definition of “low-income” is also a consideration in determining local priority for intensive and training services for Adults under WIA (§134(d)(4)(E)).
- WIA §101(10) defines “displaced homemaker” as an individual who has been providing unpaid services to family members in the home, and who has been dependent on the income of another family member but is no longer supported by that income. Both genders may be considered “homemakers” and the term “family member” can include a same-sex spouse.

Impact on TAA

NYSDOL will recognize same-sex marriages in applying the definition of “family” in TAA regulations to include spouses where that term is used in determining a TAA benefit under all four versions of the TAA (the 2002 Program; 2009 Program; 2011 Program and Reversion 2014 Program). The term “family” is referenced in several sections of the TAA regulations, including:

- §617.22 Approval of training. As a condition of approving training, the state must evaluate the worker’s financial circumstances, and whether “personal and family resources’ are available to help him/her complete the training if his/her UI or TRA payments are exhausted before the end of the training.
- §§ 617.40 – 617.48 Subpart E—Relocation Allowances. TAA benefits include a relocation allowance when the TAA participant must move to take a job. When moving costs for a family are considered – not just costs for an individual, a greater amount is potentially subject to reimbursement.
- §617.55 Overpayments; penalties for fraud. NYSDOL may waive repayment when the beneficiary was not at fault and requiring repayment “would be contrary to equity and good conscience.” In determining whether equity and good conscience exist, NYSDOL must consider, among other things, “other potential income” and “all cash resources available or potentially available” to both the beneficiary and his/her family during the time period being considered (20 CFR 617.55(a)(2)(ii). This standard only applies for participants in the 2002 Program and Reversion 2014 Program.

In summary, NYSDOL will consider same-sex partners in determining: (1) the level of resources available to help TAA participants complete assigned training; (2) the total relocation costs the allowance must cover; and (3) whether requiring a participant in either the 2002 Program or Reversion 2014 Program to pay back an overpayment will cause hardship.

Eligible Spouses for Veterans' Priority of Service

Pursuant to 38 USC 4215, all ETA workforce programs must provide priority of service to veterans and certain spouses of veterans who qualify as "covered persons." ETA has implemented the priority of service requirements in 20 CFR part 1010 which defines a "covered person" as "a veteran or an eligible spouse." It further defines "eligible spouse" as "the spouse of any of the following:

- (1) Any veteran who died of a service-connected disability;
- (2) Any member of the Armed Forces serving on active duty who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
 - a. Missing in action;
 - b. Captured in line of duty by a hostile force; or
 - c. Forcibly detained or interned in line of duty by a foreign government or power;
- (3) Any veteran who has a total disability resulting from a service-connected disability, as evaluated by the Department of Veteran Affairs;
- (4) Any veteran who died while a disability, as indicated in paragraph (3) of this section, was in existence."

Consistent with ETA's policy, NYSDOL will consider a same-sex spouse who was married in a jurisdiction that legally recognizes such marriages as a "covered person" for a veteran who is in one of the above categories.

BACKGROUND

In November 2004, an employee of Monroe Community College was denied spousal health care benefits based on the College's failure to recognize her same-sex marriage which has taken place in Ontario, Canada, where it was legally valid. This employee took legal action to protest this denial but the court initially found in favor of her employer. On appeal, this was overturned. The court concluded that the same-sex marriage, valid where it was performed in the province of Ontario, Canada, was entitled to recognition in New York State, in the absence of any specific legislation which would prohibit it [Martinez v. County of Monroe, 50AD3d 189(4th Dept. 2008)]. On June 26, 2013, the Supreme Court found that Section 3 of the Defense of Marriage Act (DOMA, codified at 1 USC Section 7) violated the U. S. Constitution. Because that section no longer controls the definition of marriage or spouse under the Federal framework for ETA programs, DOMA no longer bars the recognition of same-sex marriages in such programs.

REFERENCES

Training and Employment Guidance Letter (TEGL) 26-13, [Impact of the U.S. Supreme Court's Decision in United States v. Windsor on Eligibility and Services Provided Under Workforce Grants Administered by the Employment and Training Administration.](#)

TEGL 27-13, [Impact of the U.S. Supreme Court's Decision in United States v. Windsor on the Trade Adjustment Assistance Program.](#)