

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF EMPLOYMENT AND TRAINING
ADMINISTRATOR'S MEMO SERIES

ACTION 10-07
 NOTICE

ISSUE DATE: 5/10/2010
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*PROGRAM CATEGORIES:

AS FL ML TR
 CR IT RA WIA
 FM JC TC YA
 LM TA

To: Workforce Development Board Directors

From: Ron Danowski, Division Administrator
Division of Employment and Training



RE: Workforce Investment Act (WIA) On-the-Job Training Policies and Procedures

Purpose

To provide the State policy and procedures for statewide implementation of WIA-funded On-the-Job Training (OJT) with the State waiver

Legislative/Regulatory References

WIA 1998 Public Law 105-220, section 101(31)
WIA 1998 Federal Rules and Regulations, sections 663.700 - 663.730 and 667.268
Workforce Programs Guide, Part 1, II. I. and Part 2, II.K
November 13, 2009 Department of Labor Letter on Wisconsin's Waiver Requests
WIA Policy Update 09-05: Pre-Award Criteria – Business Relocation/Expansion (120 Day Rule)

Background

On-the-Job Training can be an effective tool in assisting participants who, after receiving core and intensive services, have been unsuccessful in obtaining or retaining employment that allows for self-sufficiency. This form of training is an exception to the requirement under WIA to establish an Individual Training Account for eligible individuals to finance training services.

OJT is defined as paid training by an employer that is provided to a participant while engaged in productive work. An OJT:

*PROGRAM CATEGORIES:

AS—Apprenticeship
Standards

CR--Civil Rights

FM--Financial Management
Requirements

FL--Foreign Labor Certification

IT--IT Systems

JC--Job Center

LM--Labor Market
Information

ML--Migrant Labor

RA--Refugee Assistance

TC--Tax Credit Programs

TA--Trade Assistance

TR--Transportation

WIA--Workforce

Investment Act

YA--Youth Apprenticeship

- Provides knowledge or skills essential to the full and adequate performance of the job;
- Provides reimbursement to the employer of up to fifty percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and
- Is limited in duration appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant.

Payments made to employers are considered to be reimbursements for costs of training, including lower productivity, which are over and above normal training that would be provided to non-WIA eligible new hires. Extraordinary costs are defined as the difference between the costs of training and the productivity associated with employing WIA participants to costs associated with others similarly employed. Employers are not required to document such extraordinary costs.

The following guidelines are designed to assist staff in developing an OJT position. These guidelines will also assist in meeting the federal regulations which require that, to be allowable, costs incurred in the OJT contracting process must be necessary and reasonable.

On-the-Job Training

A. Identification of On-the-Job Training Need

An OJT contract is appropriate when the participant lacks the skills necessary to obtain or retain employment with that specific employer. The need for any OJT should also be identified in the individual employment plan wherein the participant's interests, abilities, and needs are identified.

B. Selection of Participants for OJT

At a minimum, an individual must receive at least one intensive service, such as development of an individual employment plan with a case manager or individual counseling and career planning, before the individual may receive training services. The individual must also have been unsuccessful in obtaining or retaining employment that allows for self-sufficiency. In addition, the case file must contain a determination of need for training services as identified in the individual employment plan, comprehensive assessment, or through any other intensive service received.

In most cases, on-the-job training is not an appropriate activity for youth participants under age 18. However, per WIA 664.460 (d), WDBs may choose to use this service strategy for eligible youth when it is appropriate based on the needs identified by the objective assessment of an individual youth participant.

An individual referred to the program by an employer (reverse referral) may be considered for OJT with the employer if the following conditions are met:

1. The individual has not already been offered the job;
2. The individual lacks the skills necessary for the job;
3. Because of the lack of skills, the employer will only hire the individual under an OJT contract;
4. The job is open to any qualified applicant; and

5. The individual has met eligibility requirements for intensive services and has received an assessment, and for whom an individual employment plan has been developed.

OJT contracts may be written for eligible employed workers when:

1. The employed individual is not earning a self-sufficient wage as determined by the local Workforce Development Board (WDB); and
2. The OJT relates to the introduction of new technologies, new products or service procedures, upgrading to new jobs that require new skills, workplace literacy, or other purposes identified by the WDB.

Individuals who have completed formal training via an Individual Training Account (ITA), but are at risk of not achieving employment within 90 days of training completion, may be considered for OJT if it creates an opportunity for a positive outcome.

C. Selection of Employers for OJT

Potentially eligible employers able to participate in OJT contracting include: private-for-profit businesses, private non-profit organizations, and public sector employers. Employment and employee leasing agencies may be eligible for OJT contracts if all other requirements are met and they provide permanent on-going employment (not probationary, temporary, or intermittent) in a specific occupation and they place employees at the worksite of another employer to perform work for such employer.

An employer will not be eligible to receive WIA OJT training reimbursements if:

1. The employer has a history of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to other employees who have worked a similar length of time and who are doing the same type of work.
2. There is not a reasonable expectation of continuing employment in the occupation being trained for.
3. The employer is not in compliance with applicable assurances and certifications.

In addition:

1. WIA OJT is not an entitlement program for employers. The decision to enter into an OJT contract with an employer is at the discretion of the service provider.
2. Reimbursements for OJT are not intended to be wage subsidies to employers for normal hiring and training of employees; rather they are intended for extraordinary costs of training WIA participants. Some of these costs include more intense supervision, above average material wastage, abnormal wear on tools, down time, and a lower rate of production.
3. Payments made are reimbursement for regular "straight" time; for actual hours worked with no overtime premium, holiday pay, vacation, sick days, time spent on jury duty, or fringe benefits included.
4. OJT payments to employers may include scheduled pay raises or regular pay increases, comparable to similarly situated non-OJT employees.

5. DET recommends that participants under WIA OJT contracts comprise no more than 25% of the employer's employees. However, the WDB may make exceptions for a higher percentage on a case-by-case basis either for a particular employer or industry sector. A high percentage of OJTs at a single employer calls into question whether the funds are being used for business development/ subsidy without which the business would not exist/be sustainable. One requirement of OJT is to assess the participant's skills against the requirements of the job. If all/most of the trainees are OJT, it would be difficult to assess. In addition, the quality of training and supervision for a large number of OJT positions would be questionable.

D. Occupational Eligibility

OJT is allowable for occupations which are consistent with the participant's capabilities, are in demand occupations which will lead to employment opportunities enabling the participant to become economically self-sufficient and which will contribute to the occupational development and upward mobility of the participant on a career pathway. Consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan.

Occupations selected for OJT shall meet, at the time of completion or per company policy, the following:

1. Full time permanent positions (minimum of 32 hours per week);
2. All participants shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work. This will include unemployment compensation where the employer is normally required to provide such coverage to its employees; and
3. The position provides the participant benefits per company policy which have a monetary value (i.e., insurance, paid leave, profit sharing) other than those required by law.

Occupations under which individuals may not be placed under an OJT contract include, but are not limited to the following:

1. Occupations depending on commission as the primary income source.
2. Professional occupations for which the trainee already possesses a license (e.g., real estate agent, insurance agent, bartender, etc).
3. Occupations dependent on tips or gratuities as the primary income source.
4. Occupations which provide for only temporary or intermittent employment.
5. A low-skilled occupation that would generally require little or no training (i.e., less than six weeks), which is considered to be the normal training period for any new employee.

Generally, consideration of high turnover jobs should be avoided. In certain situations, where the returns on investment, potential earnings, or needs of the specific customer warrant it, such opportunities may be acceptable.

E. OJT Pre-Award Review

Prior to the placement of an OJT participant, a pre-award review must be conducted to ensure that a business, or part of a business, has not relocated from another location in the U.S., if the relocation results in any employee losing his or her job at the original location (see WIA Policy Update 09-05 for further information).

Prior to committing funds for OJTs, staff are encouraged to utilize an “OJT Checklist” to evaluate potential OJT employers (i.e., business size, length of time in business, type of business, percentage of workforce to be OJTs, previous OJT participation, adequacy of personnel and accounting systems, etc). This can assist in determining if the OJT experience will be of good quality, the employer is able to provide the training, and trainees will be retained into permanent employment that offers good pay and benefits, with opportunities for career advancement (see Attachment A for an example).

F. Content of the OJT Contract

OJT contracts must specify:

1. occupation for which training is to be provided;
2. name of the participant to be trained;
3. immediate supervisor’s name;
4. wage rate;
5. method and maximum amount of reimbursement;
6. beginning and ending dates of the contract;
7. job description and a training plan including training hours by skill areas or tasks;
8. special health or safety equipment or precautions required, if any;
9. special tools or uniforms required, if any, and whether or not the employer will supply them;
10. Any costs associated with reasonable accommodations for individuals with disabilities;
11. Modification conditions and requirements; and
12. Contract termination conditions.

OJT contracts are to contain appropriate assurances and certifications including:

1. Compensation for the participant at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills. Such rates may not be less than the higher of the federal or State minimum wage.
2. Provision of benefits and working conditions at the same level and extent as other employees of similar longevity and doing the same type of work. This will include unemployment compensation coverage where the employer is normally required to provide such coverage to employees. The employer must also secure worker’s compensation or other insurance coverage for work-related injury of trainees.
3. Maintenance, retention, and access to records by the WDB, State, and Department of Labor personnel to support the training activity and associated reimbursements, i.e., time and attendance records, payroll records, invoice and reimbursement documents, and other information necessary to respond to monitoring reviews or audits (documentation of extraordinary costs are not required).

4. Prohibition on the use or proposed use of WIA funds as an inducement to a business or part of a business to relocate if the relocation results in any employee losing his/her job at the original location.
5. Prohibition on the use or proposed use of WIA training funds on any business or part of a business that has relocated from any location in the U.S., until the company has operated at the new location for 120 days, if the relocation resulted in any employee losing his/her job at the previous location.
6. No currently employed worker shall be displaced by the OJT participant including a partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits. The employer also agrees that no OJT participant shall be placed into a position that is currently vacated by an employee who is on layoff, involved in a work stoppage or on strike, or is open due to a hiring freeze, or into a position in which the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring the eligible worker. The employer further agrees that this contract does not infringe in any way upon the promotional opportunities of current employees.
7. No OJT contract shall impair: (a) existing contracts for services; or (b) existing collective bargaining agreements, unless the employer and labor organization concur in writing with respect to any elements of the proposed activities which affect such agreement.
8. Assurance that adequate supervision will be provided at all time while the trainee is on the job site.
9. Health and safety standards under Federal and State law are equally applicable to OJT participants.
10. The employer must comply with civil rights law and regulations, including non-discrimination.
11. Prohibition on the use of WIA funds to directly or indirectly assist, promote or deter union organizing or engage in political activities (including lobbying) during work hours.
12. No officer, employee or other agent of the employer shall recommend hiring, decide hiring, establish salary/wage rate, or provide preferential supervisory treatment with respect to a trainee who is a member of the officer's, employee's or agent's immediate family.
13. Prohibition on being employed in the construction, operation or maintenance of any facility that is used for religious instruction or worship.
14. Prohibition on the use of funds for construction except for provision of reasonable accessibility and accommodation.

G. Determining Length of OJT Contract

An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. The amount of training hours needs to take into account the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, the participant's individual employability plan, job accommodations that may be required, and discussions with the employer. The contracted training hours cannot include those types of training normally provided by the employer for new employees such as orientation to the job/business, safety procedures, etc. In addition, consideration must be given to recognized reference materials such as ONET (see Attachment B for further details).

Generally, OJT contracts should not be done for less than six weeks or more than six months. Jobs that need less than six weeks training usually require no appreciable levels of training beyond periods of orientation that an employer would be expected to cover as part

of their normal costs of doing business. Jobs that require more than six months of training to prepare a person for successful entry level employment usually are too costly to be suitable.

H. Developing the Training Plan

The OJT contract must include a copy of the job description and training plan. The job description and training plan, including skills to be learned on the job and the time necessary to learn each skill, must be sufficiently specific to verify that training was provided in accordance with the contract. The following guidelines apply:

1. Activities (the work statement) must be described clearly to show that the employer is obligated to conduct training.
2. Skills to be learned (measurable) should be separately listed with estimated training times for each.
3. Training times must be reasonable.
4. Training times must be geared to both the complexity of the job and the abilities of the trainee (see Attachment A for guidance in determining the length of training).
5. Consideration must be given to recognized reference materials, such as ONET.
6. The training outline must identify the job title of the person(s) responsible for the training.
7. The training outline must include measurement and evaluation procedures.
8. The trainee, supervisor, and/or trainer should be knowledgeable about the training plan.
9. Consideration of reasonable accommodation(s), such as providing materials in an alternative format.
10. Identification of supportive services necessary for the individual to succeed.
11. The training site is accessible for individuals with disabilities and/or other special needs.

I. Employer Reimbursement

This sliding scale waives the WIA provision that allows reimbursement to employers of up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the OJT. DOL approved the State's waiver request, and authorized the following reimbursement rate to employers through a sliding scale based on the size of the business:

1. Up to 90% for employers with 50 or fewer employees
2. Up to 75% for employers with 51-250 employees
3. The current statutory requirement of up to 50 percent for employers with over 250 employees

The employee count is to include full-time and part-time workers, and workers placed through a private placement agency. This count is based upon the employer's total number of employees, not the number of employees to be trained. The count is to be on a company-wide basis for all locations within the State of Wisconsin; and the involved adjoining state when OJT is being offered to Wisconsin residents who work for employers in an adjoining state.

The appropriate program funds must be used for the appropriate WIA-eligible population: OJT may be provided to low-income adults with WIA Adult funds, and to dislocated workers with WIA dislocated worker funds. OJT provided with statewide funds must serve WIA eligible individuals.

Monitoring

The WDB must have policies and procedures in place to ensure that:

- The training plan has measurable indicators of performance.
- Evaluation of those indicators will occur to determine if skills identified in the training plan have been acquired.
- Onsite visit(s) and other monitoring are conducted during the course of the OJT to determine compliance with WIA requirements, including section 188, progress toward completion of the training plan and to resolve issues for the employer and/or participant.

Monitoring should also ensure that the participant is receiving the training contracted for at the wages in the OJT contract, and that the participant is not required to engage in activities prohibited by WIA. Employer records should also be reviewed to assure that the participant is receiving proper wages and that the employer is withholding taxes and paying workers compensation (or equivalent) insurance.

Performance

In addition to the WDB performance reporting, the State must address the impact the on-the-job training waiver had on the State's performance in the WIA Annual Report. WDBs will be asked to explain how the sliding scale for OJT contracts has changed the activities of the local area, and how activities carried out under the waiver have directly or indirectly affected the local area performance outcomes.

Specific to the On-the-Job Training waiver, the WDB will need to provide an annual narrative to:

- Identify what sector partnerships were involved in training activities as part of the Industry Sector Partnership Initiative as well as the employer size;
- Discuss whether the sliding scale was effective for increased employer participation, and if the training helped the employer maintain a competitive advantage;
- Describe the factors that contributed to the success of these programs; and
- Identify how many participants were hired as a result of the sliding scale waiver training.

Automated System Support for Employment and Training (ASSET) Reporting

The State is required to report performance outcomes in the Workforce Investment Act Standardized Record Data System for all individuals served under the OJT waiver. Therefore, all participants must be recorded in ASSET. The OJT service can be found in the Manage Services Menu. For Adults and Dislocated Workers, the service is a Training Service. For Youth, the service is on-the-job training. Also, an edit will be added in ASSET to prevent associating an On-the-Job Training service with Individual Training Account services.

Action Required

The WDB must:

- Adjust their local policy to allow for the increased flexibility of the State waiver, and be consistent with the other elements of this policy;

- Train or communicate to staff and contractors on the new sliding scale, and explain how they intend to implement it locally;
- Establish or refine systems to evaluate the effect of the State waiver;
- Revise any marketing to employers; and
- Submit results of the new service strategy no later than August 15, 2010.

Questions and/or Technical Assistance and Training

If you need additional information regarding this policy, please contact the Local Program Liaison assigned to your area.

SAMPLE
On-the-Job Training Checklist

Information Items

1. Business Name, Address and Contact Information

Name:

Address:

Contact Name:

2. How long has the employer been in business in this area?
Is the business being sold or merging with another company? Yes No

3. What is the chief product or service?
What is the NAICS Code?

4. How many full-time employees?
How many new hires are anticipated in the next two (2) years?
What job titles/job descriptions will need to be filled? (attach job descriptions if available)

5. Does the employer use a staffing agency? Yes No
If so, which one?
Describe the relationship.

6. Are jobs expected to last a year or more in the normal course of business? Yes No

7. What skills will current workers and new hires need to acquire to be fully productive?

8. Does the employer have sufficient equipment, materials and supervisory time and expertise to provide necessary training? Yes No

9. What are the turnover patterns and causes and could we do anything to help lower turnover?

10. What licenses or entry qualifications do the workers need?

11. How many hours per week are trainees expected to work?
What are the expected shift times and days?

12. Are any jobs based upon commissions, tips, piece work or incentives? Yes No
Is there a base wage that commissions, tips, piece work or incentive pay is added to?
 Yes No
If yes to either of the above, what entry earnings may be expected for each job?

13. Which fringe benefits are provided to regular employees?

When are these benefits made available?

Assurances and Compliance Items

14. Does the employer have a payroll system which records all pay checks and amounts?
 Yes No

Can we verify wage payments quickly onsite? Yes No
If no to either, how will wages be verified for OJT payment?

15. What is the Workers' Compensation carrier (or an equivalent system)?
Will OJT trainees be covered? Yes No

16. Are any of the jobs considered for an OJT "independent contractors" or not employed by the firm during the entire training period? Yes No

17. Are any of these jobs covered by a collective bargaining agreement? Yes No
If so, obtain and attach a "concurrence letter" from the union(s).

18. Are any employees currently on layoff? Yes No

19. Are there any outstanding wage and hour, health and safety, or discrimination complaints or adverse decisions? Yes No

20. What percentage of previous trainees, over the last two (2) years, have completed training and been retained by the firm? Number of OJTs _____; Number of employees retained _____; and _____% retained. If the retention percentage is below 75%, what improvements are planned?

**On-the-Job Training State Policy
GUIDANCE ON USING SPECIFIC VOCATIONAL PREPARATION (SVP)
SYSTEM TO DETERMINE LENGTH OF TRAINING**

The amount of time needed for On-the-Job Training (OJT) depends on several factors regarding each trainee: (1) prior work experience and education; (2) skills, knowledge and abilities; and (3) any barriers that would affect the length of the training time. The training time cannot include those types of training normally provided by the employer for new employees such as orientation to the job/business, safety procedures, etc. The length of the training is then determined by assessing and documenting the above factors for each trainee and by determining the usual time that is needed to train for the occupation or job. The trainee assessment is completed through the individual employment plan process and the length of job training is determined by the Specific Vocational Preparation (SVP) system after an analysis of the tasks involved in the OJT job. The SVP is the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

The job title should be specified by the employer. The case manager then enters this into the O*Net system (<http://online.onetcenter.org>) to determine the SVP of the job. Entering the job title in the search box may bring up an array of job titles from which to choose the most applicable. The job tasks can then be determined by reviewing the employer's job description and/or the job tasks listed on the O*Net summary report for that occupation. Along with the employer, the case manager should pick out the 5 to 7 most important job tasks for which the trainee needs to be trained, and identify any reasonable accommodation(s) as appropriate for the individual. The trainee's assessment is then used to determine the skill level of each task and the length of the training plan.

Example:

The employer job title is bookkeeper but the job duties involve mostly payroll and timekeeping. Enter "bookkeeper" in the O*Net search box and then pick Payroll & Timekeeping Clerk from the job titles and go to the Payroll & Timekeeping Clerk summary report. This page shows the O*Net Code, 43-3051.00, which could be entered on the Training Plan form. The Job Zone section (lower on the same page) shows the SVP code for this occupation is 6.0 to 7.0.

The SVP hours can then be determined from the chart below. Since the SVP for a Payroll & Timekeeping Clerk is above the maximum allowed ("5" which translates to 26 weeks), the training plan period for this position is limited to 26 weeks. For a thorough discussion of the SVP system see <http://online.onetcenter.org/help/online/svp>

Maximum Hours:

The maximum hours for training according to the SVP Code are:

SVP	Maximum Hours	Minimum Weeks
1	0	0
2	240	6
3	520	13
4	800	20
5+	1,040	26

Note: The training hours noted on the scale above give the maximum allowable hours for a given SVP. The training time may be determined on the basis of the variables of the job, the actual demands of the job stated in the job description and the training plan, and the previous education, training, skills, and/or experience of the trainee. The training hours may also be adjusted for reasonable accommodation for persons with disabilities or other individual needs which may affect the number of hours the trainee needs to acquire the skill(s). The SVPs above represent the average amount of time required to learn the techniques, acquire information, and develop the facility needed for average performance in a specific job-customer situation. Training hours should generally not exceed the SVP hours unless special needs are documented; however, in no case may they exceed 1040 hours.

The training time and reimbursement rate must be negotiated with each employer on an individual basis, depending upon the employer needs and the training requirements of the trainee. In all cases, the case notes/case file for the participant should indicate the basis for determining the number of hours of training included in the OJT contract.