

Local Workforce Area #10 Policy Letter

On the Job Training Policy

Background

Through OJT activities provided under the Workforce Innovation and Opportunity Act (WIOA), adult, dislocated worker, and youth participants can obtain the skill sets necessary to fill the jobs that are available and are being created in this economy. OJT is a type of training that is provided by an employer to a participant. During the training, the participant is engaged in productive work in a job for which he or she is paid, and the training provides knowledge or skills necessary to the full and adequate performance of the job. Employers must commit to hire and retain the participant at the end of a successful training period. OJT activities support the development of a workforce with skills that meet the needs of employers and provide additional training options for workers and employers. OJT provides an incentive to employers to hire individuals and invest in their skill development, and trainees can earn a wage as they learn. It is a critical tool that helps job seekers enter successful employment.

Participant Eligibility for an OJT

WIOA-funded OJT is available for eligible WIOA youth and unemployed or under-employed adult and dislocated workers. Employed workers may be eligible for WIOA-funded OJTs when the employee is not earning a self-sufficient wage as determined by the local workforce development area. Participants who have completed occupational skills training via an individual training account (ITA) may be considered for OJT if it creates an opportunity for the participant to become employed.

As outlined in Workforce Innovation and Opportunity Act Policy Letter (WIOAPL) No. 15-09, Training Services for Adults and Dislocated Worker, and WIOAPL No. 15-10, Youth Program Services, training services may be provided to adults and dislocated workers, and youth participants if, after an interview, evaluation, or assessment and career planning, the participant has been determined to have the skills and qualifications to successfully participate in an OJT. WIOA in-school youth aged 14-21 years may qualify for OJT, although such training may not be an appropriate activity for in-school youth whose individual service strategy (ISS) may be geared toward completion of secondary or postsecondary education instead of employment.

OJT participants must receive wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work. Appropriate workers compensation insurance protection must also be provided to all OJT participants by the employer.

OJT participants are not eligible to receive Needs Related Payments (NRPs) and cannot be immediate family members of the business owner or direct supervisor. Refer to the On-The-Job Training Guidance Manual for the different situations in which OJT-related conflict of interest may arise.

Employer Eligibility for an OJT

OJT is provided under an agreement with an employer in the public, private non-profit, or private for-profit sector to WIOA eligible participants. Careful consideration should be given while selecting a participating employer. Potential business functions to research before selecting an employer include but are not limited to:

1. Working conditions (safety and health);
2. Presence of health benefits;
3. Wage structure;
4. Turnover rates;
5. Adequate staff and equipment to carry out the training; and
6. Compliance with federal, state and local laws.

Private Placement Agencies

A private placement agency may, if all required OJT criteria are met, be an eligible employer for WIOA-funded OJT. Local workforce development areas must develop policy on OJT with private placement agencies (e.g. OJT in scenarios of "temp," "temp to hire" or continued long-term employment).

Refer to the On-The-Job Training Guidance Manual for factors to be considered before writing OJT agreements with a private placement agency.

Disqualifying Factors

Employers will be disqualified from participating in the OJT program in the following situations:

1. Businesses must not be presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in transactions by USDOL or the State of Ohio. Below are three websites that may be helpful in checking tax, environmental compliance, and debarment status.

Federal Debarment Site: <http://www.sam.gov>

Ohio Department of Taxation: <http://www.tax.ohio.gov>

Business Filing Search: <http://www.sos.state.oh.us>

2. Businesses must not have any outstanding tax liability for over six months to the state of Ohio. WDBs will require the businesses to disclose any known outstanding tax liabilities with Ohio and other states prior to entering into contract. The local WDB may consider existing out-of-state violations when determining eligibility to receive OJT funds. The local WDB must document any resolution of outstanding tax liability, which may include letters from the business or from the State from which the tax liability occurred.
3. Businesses must not have any outstanding civil, criminal or administrative fines or penalties owed to or pending in the state of Ohio.
4. The local workforce development board (WDB) must not enter into an agreement with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment.
5. The employer must comply with all applicable federal, state, local laws and regulations related to providing reasonable working conditions. OJT participants are not permitted to train or work in buildings or surroundings under working conditions that are unsanitary, hazardous, or dangerous to the trainee's health or safety.
6. If during completion of the employer information form, it is determined that a business has relocated from one U.S. labor market to another and caused dislocation at the original location, OJTs may be available at the new location only after the business has conducted work at the new location for more than 120 days. Refer to the On-The-Job Training Guidance Manual for factors to be considered in determining whether business relocation has occurred.

To verify that a business is not relocating employment from another area, a pre-award review must be undertaken and documented by the local WDB. The review must include the names under which the establishment conducts business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is being sought in connection with past or impending job losses at other facilities of their company. The pre-award review should also include a review of whether appropriate notices have been filed, as required by the Worker Adjustment Retraining Notification (WARN) Act. The review may also include consultations with labor organizations and others in the affected local area(s).

7. Absent a clear and applicable layoff definition within a collective bargaining agreement or personnel policy governing a local operation, a layoff is defined as termination with the intent to recall. A laid off employee who refuses a recall request is

no longer considered to be in layoff status. Layoff recall rights will last six months from the last day of work prior to the layoff.

If the employer has laid off someone from a similar or "substantially equivalent" work at the same local operation, no OJT or other subsidized employment is permitted. The work is considered substantially equivalent if the overlap between the work (duties and job titles) is 80% or greater. If more than one person is laid off from a substantially equivalent job, and all these persons worked their last day more than six months before the training plan begins, the OJT may proceed and the employer may be reimbursed regardless of the previous layoffs.

8. Training positions covered may not have been created by the displacement of an unsubsidized employee by a WIOA subsidized employee. This includes partial displacement such as reduction in the hours of non-overtime work, wages, or employment benefits. There is no requirement for the job to be similar or substantially equivalent. The key is employer intent: if an unsubsidized employee's earnings are reduced by hiring a WIOA subsidized participant to offset the lost productivity, it is considered displacement.

Prohibited OJT Activities

The following types of activities are prohibited from OJTs:

Sectarian activities: Funds provided to employers for OJT may not be used to employ the participant/trainee in a position involving political or sectarian activities. Furthermore, OJT participants may not assist, promote or deter union organizing, or engage in political activities during work hours.

Religious activities: OJT participants are prohibited from being employed in the construction, operation, or maintenance of any facility which is used for religious instruction or worship.

Employer Reimbursement

OJT training payments to employers are deemed to be compensation for the extraordinary costs associated with training a participant and his/her potentially lower productivity. Employers are to be reimbursed up to 50% of the wage rate of an OJT participant, not to exceed \$6,000 per participant.

Employer Information Form (Pre-Award Review)

Prior to the placement of an OJT participant, an employer pre-screening must be conducted and the JFS 80646, On-the-Job Training Employer Information form, or its locally or regionally modified equivalent, must be completed to ensure that the employer

meets the minimum standards and can provide both training and long-term employment to the OJT participant. The On-the-Job Employer Information Form may be completed once rather than each time an OJT is approved.

In case of a collective bargaining agreement, the On-the-Job Training Employer Information form must identify and the employer must provide a letter indicating union concurrence before the OJT begins. The WIOA staff at the local workforce development area is expected to contact the employer's union representative if the job is under bargaining unit authority.

The On-the-Job Training Employer Information form must be updated:

1. If the business is sold or transferred;
2. If other significant changes affecting training, hiring, or job retention occur; and
3. At least once a year from the date of issuance.

OJT Agreement

One JFS 80649, On-the-Job Training Agreement, or its locally or regionally modified equivalent, is required per employer regardless of the number of participants trained or hired. The agreement may be effective for a maximum period of one year and cover all training plans approved with the employer prior to the On-the-Job Training Agreement's expiration date.

The OJT agreement, while establishing the reimbursement procedures, remains non-financial in nature, and no money is obligated until the training plan is approved for an eligible participant. Moreover, in case a collective bargaining agreement exists, the union must be a co-signatory on the OJT agreement.

The OJT agreement should be modified before expiration only if there are significant changes, such as layoffs or changes in federal, state, and local rules and policies pertaining to the implementation of OJTs

On-The-Job Training Plan

The JFS 80642, On-the-Job Training Plan Local Workforce Agency, or its locally or regionally modified equivalent, obligates training funds for a participant and outlines the planned training activities to be accomplished during the training period. Unlike the OJT agreement, the training plan is required for each participant prior to the participant beginning the OJT. The On-the-Job Training Plan Local Workforce Agency constitutes the financial obligation between the agency or service provider and the employer, and is the document which authorizes reimbursement of the agreed upon amount after successful completion of the training plan period (or the retention period, if applicable).

The duration of the OJT shall not exceed a maximum of 1,040 hours unless extenuating circumstances exist, in which case appropriate documentation is required. The length of the training considers several factors such as participants' skills gap including prior work experience, the occupation for which the participant is receiving training, the content of training, and the service strategy of the participant.

Exceptions for individuals with disabilities or other significant barriers: OJT participants facing a significant barrier to employment, such as a disability covered under the Americans with Disabilities Act (ADA), may be considered for a longer training duration up to 50% additional hours when compared to typical length of a similar OJT, not exceeding a maximum of 1,560 hours.

The On-the-Job Training Plan Local Workforce Agency also identifies the skills to be learned during the OJT. OJT providers may base the identification of skills needed, as well as the justification of training duration, upon the Occupational Information Network (O*NET) and specific vocational preparation (SVP), company job description, input from the employer/supervisor, and/or other appropriate data sources.

Invoice

Payments to employers should be managed by an invoice system that documents the number of hours worked by the OJT participant and the hourly rate of pay.

Payment point procedures can be developed by the local workforce development areas so long as the reimbursement does not exceed 50% of wages. Local workforce development areas also have discretion in determining if they wish to withhold reimbursement for 30, 60 or 90 days to ensure retention after the end of training. The local area has a maximum amount of \$6,000 per participant and \$60,000 per company per fiscal year.

During the WIOA-funded OJT, participants might also become eligible for other funding streams, such as Trade Adjustment Assistance (TAA), that would preclude their receiving continued funding under the OJT. In such an instance, local areas must develop a plan regarding payment points and transitioning participants from one program to another without negatively affecting the employer or the participant.

The reimbursement base is regular "straight time" hours and does not include commissions, overtime pay, holidays, vacation, sick pay or pay for other hours not worked. Further, payments to employers must be based on scheduled raises and regular pay increases if they occur.

It is expected that OJT participants will be retained at the completion of training.

Monitoring

At a minimum, the WDB Director will monitor for the following:

1. Document information was received directly from the OJT participants;
2. Obtain the trainee supervisor's perspective about the training progress; and
3. Review the employer payroll records.

The key monitoring issues include verifying and documenting that:

1. There was a need for training;
2. Training was provided to the participant;
3. The length of OJT training was reasonable;
4. The employer reimbursement rate complied with policy; and
5. Other applicable OJT rules and requirements were followed.