



## ON THE JOB TRAINING POLICY FOR WIOA TITLE I PROGRAMS

### Workforce Innovation and Opportunity Act Policies and Procedures

EFFECTIVE DATE: 11/5/2021

POLICY #: P208 v.2

#### I. PURPOSE

This policy communicates the Workforce Development Council of Seattle-King County (WDC) local workforce development board policy and operational guidance regarding on-the-job training (OJT) under the Workforce Innovation and Opportunity Act (WIOA) for Title I eligible adults, dislocated workers, and youth participants.

#### II. BACKGROUND

Section 134(c)(3)(H) of WIOA allows WDCS to reimburse employers for training their own employees through OJTs. OJTs are contracts that pay the employer an amount equal to a portion of the trainee's wages to offset the cost of training and lost productivity during the training period. OJT is an important work-based learning option that puts Title I enrolled unemployed individuals who are lacking some of the skills required by an employer into work. OJT may also be used to upgrade the skills of underemployed and low-income WIOA Title I eligible individuals in order to promote them into full-time, long-term, better paid work. OJT offsets the employer's training costs while the trainee develops the skills to succeed in his or her position. OJT participants earn a regular paycheck while upgrading their skills. For these reasons, OJT is a viable alternative to classroom-based training for those seeking employment, reemployment, and upward mobility. In some instances, OJT provides the impetus for employers to create more job opportunities or develop in-company training programs.

#### III. DEFINITIONS

- A. **On-the-job training** - Training provided by employers to their employees in the form of productive work in jobs that:
- provide the knowledge or skills essential to the full and adequate performance of the jobs,
  - are available through programs that provide reimbursement to employers of up to 50 percent of the participants' wages, with the exception provided by this policy, for the extraordinary costs of training and additional supervision related to the training, and
  - are limited in duration as appropriate to the occupations for which participants are being trained, taking into account training content, participants' prior work experiences, and participants' service strategies.

- B. **In-Demand Industry Sector or Occupation** - In general,
- An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the state, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors; or
  - An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency, [based on the Self-Sufficiency Calculator](#) and opportunities for advancement) in an industry sector so as to have a substantial impact on the state, regional, or local economy, as appropriate.
    - a. A substantial/significant current or potential impact relates to the relative size and importance of the industry or occupation in terms of the number of jobs it maintains/produces, its role in supply chains, its financial impact on the local economy, and/or the quality of jobs related to the industry including opportunities to advancement.
  - The determination of whether an industry sector or occupation is in-demand shall be made by the state workforce board or WDC, as appropriate, using state and regional business and labor market projections, including the use of labor market information. [WIOA Section 3(23)]
- C. OJT employers – Defined as WIOA Recipients because they receive Financial Assistance as defined at 29 CFT 37.4. The regulations at 29 CFR 37.4 describe Financial Assistance as, “Any other agreement, arrangement, contract or subcontract (other than a Federal procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under WIOA Title I.”

#### IV. POLICY

- A. **Use of OJTs:** The WDC encourages the use of OJT by its subrecipients to help job seekers, especially those with barriers to employment, find and keep good jobs and to help local employers offset the cost of training new employees or upskilling existing employees for better job opportunities.
- B. **Hire First** – OJT is a hire-first program, not a subsidized employment program.
- The OJT participant is an employee of the business that provides the OJT.
  - The OJT should result, at a minimum in the retention of the trainee by the business providing the training.
- C. **OJT Trainee Requirements:**
- Trainees participating in OJT *must be eligible and enrolled* in WIOA Title I Adult, Dislocated Worker and/or Youth funding streams in compliance with WDC [Policy No. 02-2001, Eligibility Policy and Documentation Requirements](#).
  - Income requirements for WIOA eligibility should be calculated as described in [WDC Policy 02-2001 V8 Eligibility](#), however, participant wages from an OJT are *excluded* from the total reportable family income.
  - Individuals who have received training through an ITA, cohort or other WIOA

- funded training are also eligible for OJT.
- If the OJT trainee is unemployed, the employer providing the training must agree to hire the trainee before the start of the OJT.
  - OJT may be used for incumbent workers only if the employee requires training in order to be retained by the employer, if the employee is not earning self-sufficient wages or wages comparable to or higher than wages from previous employment, or if the trainee needs training to deal with the introduction of new technologies, new production or service procedures, a new position that requires additional skills, workplace literacy, or similar situations.
  - OJT trainees must be assessed to determine that they have the skills and qualifications to participate successfully in an OJT.
  - OJT trainees must have an Individual Service Strategy (ISS) or Individual Employment Plan (IEP) that documents the participant's need for and benefit from an OJT.
  - OJT trainees are subject to the lifetime maximum dollar limits (\$14,000)
  - If the cost of the OJT is anticipated to deplete the trainee's lifetime training dollar limit, the service provider issuing the OJT must submit an Exception Request to the WDC Project Manager for approval before the OJT begins. The WDC has the authority to grant requests for exceptions to the lifetime limit on training expenditures, on a case-by-case basis, if the exception would significantly benefit a participant in meeting the goals of the participant's ISS or IEP. The WDC will not approve retroactive requests. WIOA Exception Request Forms are available at: [www.seakingwdc.org/policies](http://www.seakingwdc.org/policies).

**D. OJT Employer Requirements – OJT is not an entitlement program for employers. The decision to enter into contract with an employer is at the discretion of the WDC and its subrecipients.**

- OJT contracts and reimbursements may only be provided to eligible employers that meet the following criteria:
  - a. Have the capacity and resources to adequately train the OJT candidate with the intent of retaining the employee in long-term, full-time employment;
  - b. Enter into a signed training contract that spells out the training and retention expectations of the employee, the employer, and the subrecipient;
  - c. Are financially solvent and have an adequate payroll record keeping system that tracks hours worked, gross pay, deductions, and net pay;
  - d. Have the explicit agreement of the bargaining agent if OJT positions are covered by collective bargaining agreements;
  - e. Do not illegally discriminate in training or hiring practices because of race, color, sex, national origin, religion, physical or mental handicap, political beliefs, or affiliations, or age;
  - f. Do not engage employees in partisan political activities;
  - g. Provide the same rate of pay, fringe benefits and working conditions for OJT trainees as similarly situated employees in similar positions in the local labor market;
  - h. Have adequate Workers' Compensation or accident insurance coverage in

effect

- i. Do not have a member of the OJT trainee's immediate family engaged in the administrative capacity for the employer or supervision of the OJT participant.
  - j. Are private sector for profit or non-profit employers. Preference should be provided to private sector employers operating in in-demand sectors or providing in-demand occupations or providing higher than average wages. WIOA bans the use of OJTs with public sector employers, casinos, gaming establishments, swimming pools, aquariums, zoos, golf courses and faith-based organizations.
- Employers providing OJT are not subject to the requirements of the eligible training provider list and are not included on the State list of eligible training providers and programs.

#### E. OJT Prohibitions:

- OJTs cannot be placed in jobs that pay by commission or piecework. Furthermore, seasonal and temporary employment and part-time are not considered appropriate placements because the OJT outcome is focused on long-term employment.
- The OJT may not assist, promote, or deter union organizing.
- OJT positions must not result in the displacement of current workers who are on layoff status with recall rights from the same or any substantially equivalent job or are terminated with the intention of filling the vacancy with an OJT participant.
- The OJT position must not infringe on the promotional opportunities of currently employed workers.
- The OJT must not result in the reduction in the hours of non-overtime work, wages, or employment benefits of any currently employed employee.
- The OJT employer must not have relocated all or part of their business within the previous 120 days where the relocation action has resulted in the loss of employment of any employee at the original location.
- The OJT employer must not have been convicted of violating federal laws and regulations.
- If the OJT employer has received OJT payments under contracts under WIOA or the Workforce Investment Act of 1998, the employer must not have exhibited a pattern of failing to provide participants with continued long-term employment as regular employees with wages and employment benefits (including health 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.

#### F. OJT Contracts - OJTs may only be provided through a contract with the employer that includes a training plan.

- The training plan must clearly identify the skills/competencies that the trainee will learn in order to successfully complete the training and be retained by the employer.
- The training plan/agreement must be signed by all parties (subrecipient staff, employer, and trainee) before the OJT employee may begin training.
- 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,

taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate. The training plan should be for no less than four (4) weeks and no more than twenty- six (26) weeks unless an exception is granted by the WDC.

- WDC service provider’s OJT contracts or agreements with employers must include the full assurance language outline in 29 CFR 38.25 (a)(i)(ii), or a reference to the assurances in the contracts with service providers. If a reference to the citation is used, it should read “The nondiscrimination assurances at 29 CFR 38.25 (a)(i)(ii) apply to this contract.”
- WDC service providers are responsible to monitor the employers they have agreements with to ensure nondiscrimination in the OJT contract. A review of OJT contracts will be included in the EO/Nondiscrimination to ensure compliance.

**G. Language in 29 CFR 38.25 (a)(i)(ii) –** As a condition of the award of financial assistance from the Department of Labor Title I of WIOA, the grant application assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the Grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:
  - a. Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;
  - b. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color, and national origin;
  - c. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
  - d. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
  - e. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
- The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant’s operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States

has the right to seek judicial enforcement of this assurance.

#### H. Employer Reimbursement:

- Employers may only be reimbursed for the portion of the trainee's wages agreed upon in the OJT contract.
  - Employers may be reimbursed only for time the trainee was actually on the job and receiving training.
  - Generally, reimbursement to the employer **should not** exceed 50 percent. Reimbursement of up to 75 percent of trainee wages may be provided only if the following conditions are met:
    - a. The participant faces one or more barriers to employment as defined in WIOA Section 3(24);
    - b. The employer is a small business with fewer than 250 employees;
    - c. The employer-provided training results in an industry-recognized credential or advancement opportunities for the trainee;
    - d. More than one employee is participating in the training;
    - e. The trainee receives wage and/or benefits that result in self-sufficiency, as defined by the [Self-Sufficiency Calculator](#) during and after completion of the OJT;
    - f. The OJT position is an in-demand occupation or industry as identified by the local board in alignment with WIOA Section 3(23); and determined by Employment Security Department (ESD) labor market information;
    - g. The OJT employer is:
      1. in an in-demand industry as defined by WIOA Section 3(23) and determined by ESD labor market information; or
      2. in an in-balance industry as determined by ESD labor market information; or
      3. in a declining industry, but there are compelling reasons (e.g., evidence of long-term viability of the employer) justifying reimbursement above 50 percent.
    - h. The employer is current in unemployment insurance and workers' compensation taxes, penalties, and/or interest or related payment plan.
- I. **OJT and Apprenticeship** – OJTs may be developed for participants enrolled into a Registered Apprenticeship program as per the guidelines in the OJT manual. OJT contracts must be with the employer. OJT funding may not cover the classroom portion of the program; funding may only cover the on-the-job portion of the Registered Apprenticeship. A combination of Individual Training Accounts and OJT funding may be used to completely fund the Registered Apprenticeship.
- J. **Completion** – An OJT Training Plan is ended when of the following occurs:
- The trainee successfully completes the OJT and is retained by the employer
  - The trainee quits or is terminated prior to training end date.

- K. **Termination:** A service provider may terminate an OJT training plan when the following situations occur:
- The employer fails to provide the training that was specified in the training plan
  - The employer violates terms and conditions of the Training Agreement, including general violations of Federal and/or State regulations such as significant safety violations or failure to pay wages. In such cases, the subrecipient must notify the WDC.

## V. REFERENCES

- Code of Federal Regulations – 20 CFR 680.180; 680.700; 680.710; 680.720; 680.730; 680.830; 680.840; 681.600; 683.200; 683.270; 250; 255; 270; 275; 830-840
- Code of Federal Regulations – 29 CFR Part 97.35 & Chapter V
- Training and Employment Guidance Letter (TEGL) 19-16
- Training and Employment Notice (TEN) 41-10
- 2020 Washington State Nondiscrimination Plan
- Workforce Innovation and Opportunity Act, Section 3(23); 3(44); 134(c)(H); 134 (c)(3)(D) ii; 181(a)(1)(A); 181(b)(7)
- WA Employment Security Department, WIOA Title I Policy 5606 – 7/1/2015

Supersedes:

- V1 – 04/19/2019